

5.2. Highways (Amendment) Bill 2015 – Clauses considered

The Speaker: We turn now to Item 5.2, the Highways (Amendment) Bill, and I call Mr Gawne to move clauses. Before I do, as Members will recall, the House has agreed clauses 1 to 14 and the mover will move the remaining clauses now.

Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

I hope and trust that I will be able to motivate Members to have a more interesting debate as we go through these clauses.

Clause 15. Consequent upon the repeal of the Highway Act 1927 by part 3, provision is re-enacted, enabling the Department of Infrastructure to make regulations for preventing the commission of nuisances on highways and the distribution of handbills, papers or other articles.

The back-up power in the 1927 Act has never actually been made use of. It is simply there in case nuisances etc. on highways ever arise in the future, none of which are presently foreseeable.

I beg to move.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second, sir.

The Speaker: Hon. Members, I put the question. Clause 15: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16, please.

Mr Gawne: Gura mie eu, Loayreyder.

The Department of Infrastructure is empowered to improve access to any land from a highway in the event that it considers additional works to be needed. The Department of Infrastructure's reasonable expenses may be recovered from the owner or occupier of the land. Notice of the proposed works must be served on the owner or occupier, who may appeal within 28 days to the High Bailiff by virtue of an amendment made to schedule 5 by clause 33.

I beg to move.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second.

The Speaker: Hon. Member, Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker.

Can I ask the mover ... It says that the landowner can appeal to the High Bailiff. At whose cost would that be? If the person who owned the land felt this was unjust, would he have to then go to the High Bailiff and pay a fortune to fight the Department?

The Speaker: Mover to reply. Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Certainly, as I understand it, whenever someone wants to take something to the High Bailiff they have to make their case. And, as I also understand it, if their case is a good case, the High Bailiff can

award costs against the Department. That is how it has always worked, in terms of my understanding of the situation.

What we are talking about here, though, is a situation where a landowner has done unsatisfactory work, in terms of joining his land to the highway, which the Department believes is either unsafe in some way or potentially likely to result in a danger, and the Department is empowered to undertake works to improve that junction.

So, yes, the Department will always try and work with landowners, and very rarely do we actually need to have this sort of power, but it would certainly be an assistance to the Department and I do believe that it is not unreasonable in relation to the way that the clause is drafted.

I beg to move.

The Speaker: Mr Singer, Hon. Member.

Mr Singer: Thank you.

Can I ask the Minister: if these works have to be done, it says here –

Mr Gawne: I have moved the clause.

Mr Houghton: Sorry. I beg to second, sir.

Sorry, Mr Singer.

Mr Gawne: Sorry. I just moved the clause. There was a debate; I have responded to the debate. I do not quite understand.

Mr Singer: I indicated I –

The Speaker: You wish to speak on clause 16, sir?

Mr Singer: Yes, I indicated to you, and then you called Mr Malarkey.

The Speaker: You may speak.

Mr Singer: Thank you.

I just wanted to ask, if this work has to be done – and it might be a considerable amount of work – it says here the Department can do it and recharge. If it is a considerable amount of work, would it not go out to tender, maybe privately? That could be done cheaper than through the Department.

The Speaker: Minister to reply.

Mr Gawne: Gura mie eu. I have already replied, but I am happy to reply again on your instruction.

First of all, the Department would like to think, and indeed I think there is strong evidence to suggest now, that we are as cost effective as the private sector. We have done an awful lot of work over the last four or five years to significantly reduce our costs. But quite clearly the actions ... The Department is not going to take these actions unless the Department cannot reach agreement with the landowner. Clearly it would be in the best interests of the landowner to comply with reasonable standards in terms of safety or potential danger to the highway. So, for example, if someone puts in a road entering into a field without doing anything much with the drains and the water regularly spills out onto the road and mud and stones come onto the road, that is going to be a danger to traffic. The Department may wish to do something to stop that happening. It would not be unreasonable, really, to request the landowner to do that, and it is really down to the landowner to respond to that request. If, however the landowner refuses to respond to the request, then the

Department has the power to do the works and the landowner then has the ability to appeal to the High Bailiff.

I beg to move.

Mr Singer: So the answer is no.

The Speaker: Hon. Members, I will treat the last part of the debate as an intervention from the Hon. Member for the purposes of enhancing debate. *(Laughter and interjection)*

Those in favour of clause 16 standing part of the Bill, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Clause 17. This clause substitutes a new section 78, which now contains supplementary provision with respect to the provision of highways amenities – street cafés, kiosks etc. Where they are 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 now reduced from 28 to seven days.

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. Where a licence authorising an amenity is issued, legislative duplication is avoided by removing the need to obtain other consents for matters authorised by the licence. At the request of the Department of Infrastructure's Planning Division, as was, the power to authorise an amenity is now devolved entirely to the local authorities, given that they exercise certain planning functions.

In amplification, the devolution of authorising power on local authorities alone was requested by the Department of Infrastructure's Planning Division before the transfer of functions to DEFA.

I beg to move.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second, sir.

The Speaker: Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker.

Just to congratulate the mover for bringing this forward and helping with clarification for local authorities, and hopefully speeding matters up in the future. I welcome this clause.

The Speaker: Hon. Member for Michael, Mr Cannan.

Mr Cannan: Two questions for the Minister on this clause.

Can he just clarify, when he says an annual charge of a *reasonable* amount for its administration of its licence – that is point 6 – what that actually infers and how that is actually determined?

Also, in terms of the overall impact of this particular clause, is there any foreseen danger that when events such as the TT and Grand Prix and other local events of significance come along, we perhaps become overrun potentially with these licences being given out for temporary structures and potentially is there any impact on, for example, what might be commonly referred to as burger vans and other transportable fast food outlets?

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

Mr Gawne: Gura mie eu, Eaghtyrane.

I hope that I can give reassurance to the Hon. Member for Michael, not least through the contribution from the Hon. Member for Douglas West – or South, is it?

Mr Malarkey: South at the moment.

Mr Gawne: I am never quite sure ... Douglas South, Mr Malarkey, who has welcomed this provision. The provision basically is trying to move us from a position where three different agencies of Government have to give permissions to allow certain fairly basic and simple things to happen. So, for example, use of street furniture outside of cafés: at the moment, local authorities have a certain role to play, the DEFA planning team has a certain role to play and the highways department has a certain role to play. What we are trying to do is simplify the existing procedure, so there is no new power inasmuch as we are creating a new ability to do things. All we are doing is trying to make what already exists simpler for all people – not just the persons trying to do things on the highways, but also the officers concerned, because, quite frankly, at the moment it is an over-bureaucratic situation and needs to be reformed. **(Two Members: Hear, hear.)** So this is simplifying things, making things easier for the people we represent to go about their business.

I beg to move.

The Speaker: I put the motion that clause 17 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 18, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Clause 18. In addition to the circumstances that I have described in previous parts of this debate moving other clauses, the Department of Infrastructure is empowered to acquire by agreement any land blighted by highway works.

Those previous statements made were in relation to acquisition of land and, possibly in an attempt to avoid excitement in relation to this particular clause, I will emphasise that the Acquisition of Land Act 1984 applies in this case, so any compulsory acquisition of land must be authorised by Tynwald. Twenty-one days' notice to affected parties must be given prior to Tynwald debating the matter.

The value of the land is open market value together with 10%, and if there is any dispute on the value of land, that will be sent to an independent panel of arbitrators established by the Governor, with advice from the Department of Infrastructure.

So any compulsory purchase is going to be done in the normal way. It is not giving the Department the power to just go out there and acquire land willy-nilly without recourse to Tynwald.

I beg to move.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second.

The Speaker: I put the question. Clause 18: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

Mr Gawne: Gura mie eu, Loayreyder.

Clause 19. This new provision is made extending from footpaths to footways the Department of Infrastructure's power by order to convert them into cycle tracks or bridle paths. Schedule 2 to the Road Traffic Regulation Act 1985 is applied as to the procedure for making such Orders.

Footpaths are freestanding highways in their own right, whereas footways are pavements that are part of all-purpose highways, being highways that contain a carriageway for the use of vehicles.
I beg to move.

Mr Houghton: I beg to second.

The Speaker: Mr Houghton, clause 19. Mr Houghton, are you seconding?

Mr Houghton: I beg to second.

The Speaker: Yes.
Mr Robertshaw.

Mr Robertshaw: Mr Speaker, thank you very much.
Could the Minister indicate that if such an Order was made, where would the cost fall? Would it fall on the Department or the landowner?

The Speaker: Mr Gawne to reply.

Mr Gawne: Gura mie eu, Loayreyder.
Certainly, as I understand it, this is in relation to public rights of way and public highways, so the cost falls upon the Department because it is our responsibility.

Mr Robertshaw: As far as you know?

Mr Gawne: However, if that is incorrect I will come back to Members at Third Reading and ...
[Inaudible]

The Speaker: I put the question. Clause 19: those in favour, say aye; against, no. The ayes have it.
The ayes have it.
Clause 20, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.
As presently drafted, this clause caters for the rectification of definitive maps or statements where a right of way on foot shown on them is different from the right as exercisable on the ground.
Mr Houghton has tabled a departmental amendment substituting a new clause 20, containing four new sections. The clause and Mr Houghton's speech will no doubt be self-explanatory.

The reasons for the amendment are twofold. First, on closer examination of section 92 by Chambers, it was found to be distinctly less than serviceable. To begin with, it refers, without comment, to a provision that was repealed by the Act as originally enacted, it makes no provision for the replacement of definitive material, it launches into the use of the terms 'definitive map' and 'statement' without explanation, it contains a date that bears no relation to anything much, and it is written in the most opaque language. Second, although clause 20 incorporates a power of rectification, it fails to do so with adequate safeguards.

All in all, Chambers advised that section 92 as amended by clause 20, as it presently stands, was simply far too unsafe to be left in that condition.

I beg to move clause 20 and, by doing so, hope that Hon. Members will be enlightened by my hon. colleague, Mr Houghton.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
I beg to second and reserve my remarks.

The Speaker: Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

The purpose of this amendment is to substitute a new clause 20 that now replaces section 92 of the Highways Act 1986 with a series of new sections, as the Minister has already mentioned.

Those sections spell out much more clearly the requirement to maintain the definitive maps and statements that, taken together, set out the rights of way on the Island. They also provide for the amendment of those documents and make provision, subject to appropriate safeguards, for the rectification of the definitive maps and the associated statements.

The reason for adding provision on rectification is the recognition that there are some instances where a right of way is shown on a definitive map but the right as exercisable on the ground is, and always has been, along a different line. The new provision contains safeguards equivalent to those for amendment, so that the rectification procedure cannot be issued to circumvent the necessary processes before an adjustment is made to a right of way.

I am of the opinion that the provision, as now drafted, fully meets, in a practical way, the concern about the rectification expressed at Second Reading by the Hon. Member for Douglas West, Mr Thomas.

I beg to move the amendment standing in my name, sir:

Substitution of clause 20

Page 24, leave out lines 1 to 8, leave out the existing clause and substitute —

*‘20 Substitution of section 92: Definitive maps – rights of way
For section 92 substitute—*

«92 Rights of way: definitive maps and statement

(1) The definitive maps and statement prepared, before the coming into operation of this section as originally enacted, under section 6(1) of the Public Rights of Way Act 1961, shall continue to be deposited in the General Registry.

(2) The Department may prepare copies of definitive maps (whether in the form in which they were first deposited as mentioned in subsection (1) or in a form which reflects amendments under section 92A and any rectifications under section 92B which have been made to the definitive map and associated statement on the date which the copy in question was prepared) and keep those copies in electronic or physical form provided that —

(a) they show the land to which they relate at the scale of 1:10560; and

(b) they identify, or are associated with a statement which enables a user to identify—

(i) the relevant date in respect of a right of way;

(ii) the nature of that right, including whether it is subject to conditions or limitations; and

(iii) the route and width of the route over which the right of way is exercisable.

(3) Maps prepared as mentioned in subsection (1) or (2) are referred to elsewhere in this Act as “definitive maps”.

(4) In this Act references to a “statement” associated with a definitive map are references to —

(a) a statement associated with a definitive map prepared under sections 5 and 6 of the Public Rights of Way Act 1961¹ by the former Isle of Man Highway and Transport Board; or

(b) a statement associated with any subsequent definitive map prepared by the Department of Infrastructure.

¹ Repealed by the relevant entry in Schedule 9 to the Highways Act 1986.

(5) A definitive map, and any statement associated with it, is conclusive evidence of the particulars which it contains to the following extent —

(a) if the map shows a public footpath, the map is conclusive evidence that there was at 29th May 1973 a footpath as shown on the map;

(b) if the map shows a road used as a public path, the map —

(i) is conclusive evidence that at 29th May 1973 there was a highway as shown on the map over which the public had a right of way on foot; but

(ii) is not conclusive evidence that at that date the public had any other form of right of way over that road.

This subsection is subject to section 92C(2).

(6) If, by virtue of subsection (5)(a) or (b), a map is conclusive evidence at 29th May 1973 of the public footpath or road used as a public path shown in it—

(a) any particulars contained in a statement associated with it about the position or width of the public footpath or the road used as a public path are conclusive evidence of its position or width at that date; and

(b) any particulars contained in that statement about the limitations and conditions (if any) affecting the right of way are conclusive evidence that those limitations and conditions applied to the right at that date.

For the sake of clarity paragraph (b) does not affect the question of whether the right of way was subject to any other right, limitation or condition at 29th May 1973 (or the date on which that right of way came into existence, if later).

(7) A document which purports to be authenticated by the Chief Registrar as a copy of a definitive map or a statement associated with it—

(a) is receivable in evidence without further proof; and

(b) is to be deemed to be such a copy unless the contrary is shown.

(6) Sections 92A to 92C make further provision about definitive maps.

92A Definitive maps and associated statements: amendment

(1) For the purpose of this section, the following are relevant events—

(a) the coming into operation of any order under section 33, 34 or 91; or

(b) the happening of any other event, including an act of dedication (whether under an agreement under section 4 or 87 or otherwise),

by reason of which —

(i) a footpath, cycle-path or bridle-path particulars of which are given in a definitive map or an associated statement has been widened, extended or extinguished; or

(ii) a new footpath, cycle-path or bridle-path has been created.

(2) The Department must, as soon as practicable after the happening of a relevant event, amend a definitive map and associated statement to include particulars of any necessary change to that document resulting from the event, subject to the remaining provisions of this section.

(3) Before the Department makes any amendment to a definitive map or an associated statement the Department must—

(a) publish on a website maintained by or on behalf of the Department, and in such other ways as it considers appropriate,—

(i) details of the proposed amendment to the definitive map and associated statement;

(ii) a notice indicating that it will take into account any objection made to it within 28 days of the first publication of the details mentioned in subparagraph (i); and

(iii) giving details of how such objections may be made; and

(b) serve written notice on the owner, lessee and occupier of any land affected by the proposed amendment giving the same information as is required by paragraph (a).

This is subject to subsection (4).

(4) Subsection (3) does not apply if the proposed amendment arises in connection with —

- (a) *an order under section 33, 34 or 91; or*
- (b) *an agreement under section 4 or 87.*
- (5) *In a case to which subsection (3) applies, if any objection is received within the time permitted for making it and is not withdrawn, the Department must not make the amendment without the leave of the High Court.*

92B Definitive maps and statements: rectification

- (1) *This section applies if it appears to the Department that details of a foot path, bridle path or cycle way shown or recorded in the definitive map or statement —*
 - (a) *do not reflect the route or width of the foot path, bridle path or cycle way on the ground; and*
 - (b) *have not reflected that matter since 29th May 1973 or, if later, the date on which the foot path, bridle path or cycle way was recorded on the definitive map.*
- (2) *If this section applies, the Department must take the same steps to rectify the definitive map or associated statement as it would take if it were proposing to amend the map or associated statement under section 92A (references in that section to amendment being read as references to rectification).*

92C Definitive maps and statements: supplemental

- (1) *An amendment to, or a rectification of, a definitive map or associated statement is to be treated as if it had always formed part of the map or statement (as the case requires), subject to what follows.*
- (2) *In the case of an amendment to a definitive map or statement associated with it section 92 has effect as if, instead of referring to 29th May 1973, it referred to the date when the event giving rise to the amendment occurred.*
- (3) *The width of a public footpath, or a road used as a public path, shown on a definitive map shall, unless the contrary is shown in the associated statement, be deemed to be not less than 3 feet.*
- (4) *The width of a cycle-path or bridle-path shown on a definitive map shall, unless the contrary is shown in the associated statement, be deemed to be not less than 6 feet.*
- (5) *The validity of the definitive maps and associated statement may not be questioned in legal proceedings of any description except proceedings for a declaration under the Human Rights Act 2001.».*

The Speaker: Mr Peake, Hon. Member.

Mr Peake: Mr Speaker, I beg to second the amendment.

The Speaker: Floor open for debate.

Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

I think I am obliged to say, before I speak on this amendment – and I am speaking to the amendment – that I am a landowner with a right of way passing down the eastern part of the property and the land, and also to the south-west as well.

Really, my question to the mover of the amendment – and obviously there has been a flurry of activity and interest surrounding this particular amendment in the last 48 hours or so ... My concern relates to the retained ability of a landowner to appeal against an action taken on the part of the Department. It seems to me, right or wrong, that the authority will be contained within the Department, and it appears that there will be little opportunity to appeal.

So my question specifically is: does this amendment conflict with normal property rights as encompassed in the European Convention on Human Rights? In other words, is there a clear, cogent

method of a landowner appealing if he or she, or the company, is not comfortable with the redefinition of the line of the right of way?

Thank you, Mr Speaker.

The Speaker: Hon. Member, Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker.

I appreciate the Department acknowledging the position as stated at the Second Reading.

Goldie-Taubman, up there, our Speaker, had 12 years of dispute, a hundred years or so ago, about public rights of way. He was attempting to extinguish rights of way. I should record, in fact, that the right of way that was there actually goes, I think, in part through land that we either own or have rights to.

It is a very controversial issue, and, in the light of the discussion, I call on the Legislative Council to review these points very carefully ... [*Inaudible*] (**Mr Robertshaw:** Hear, hear.) going to have lots of energy to do that, having not met since 30th June. (*Laughter*) (**Mr Robertshaw:** Hear, hear.) So I hope the Council will take it on themselves to fully investigate these when it gets to that stage.

Mr Robertshaw: Hear, hear.

The Speaker: I feel bound to comment on the last contribution that it is the duty of Members of this House to be entirely satisfied that the legislation that leaves it and goes to the Legislative Council is in a manner with which they are content. (**Several Members:** Hear, hear.) Please do not be lazy and allow the Legislative Council to rectify any deficiencies in our legislation. That is the whole purpose of amendments and tabling notices in advance.

Does anyone else wish to speak?

I call on the mover of the amendment to reply. Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

In particular I would like to thank the Member for East Douglas, Mr Robertshaw, who asked the critical question, which is easily answerable. All this clause will simply do – this amendment, and therefore the clause – is give the legal *vires* to what everybody understood was there in the first place.

If I just read this out for *Hansard*, Mr Speaker, for clarification for anyone wishing to see what the Department's viewpoint was:

Section 92(1) of the Highways Act 1986 notes that the definitive maps and statement should continue to be deposited in the General Registry. The definition of 'the definitive maps and statement' contained within section 119 states: "the definitive maps and statement" means the definitive maps and statement prepared under section 6(1) of the Public Rights of Way Act 1961.'

Unfortunately, the Public Rights of Way Act 1961 was repealed by the 1986 Act, without reference to the fact that it is repealed; therefore, no definition of the definitive maps and statement exists within the context of the 1986 Act, and thus the procedures for replacing or amending the definitive maps and statements are rendered meaningless.

This piece of legislation before us today simply puts that right. So I am quite happy to confirm to the Hon. Member, and anyone else who may have concerns, that of course rights of way, whether they change in due course, is a matter for Tynwald to approve of. And of course, to do with any kind of appeal, it would be against the Human Rights Act whatsoever if there was not any appeal mechanism within Government at all. Very happy to clarify that.

Does this amendment conflict with normal rights, or cogent rights, within the method of appeal for persons, landowners or otherwise? No, it does not. It simply puts into legal *vires* what was not there before by an omission by a previous Act that had been repealed.

I note the Speaker's rebuke to Mr Thomas, and I hope he is able to take that away, (*Interjection by Mr Thomas*) back to the Department for further discussion

Thank you. I beg to move.

The Speaker: I call on the mover of the original clause, Mr Gawne, to reply to the debate.

Mr Gawne: Gura mie eu, Loayreyder.

I thank my seconder and I, of course, thank Mr Houghton for his amendment, which I do think makes a lot of sense. I have spent a lot of time checking out what the amendment does. I have been checking out what the original Act did, and of course, as the hon. mover of the amendment has highlighted, sadly, the 1986 Act repealed the Act that gave a definition of what a definitive map and statement is. So, without that, actually, a lot of the issues ...

I do thank Mr Killip. I understand he is in the ... Oh, maybe he has gone now. I think he was in earlier. I thank Mr Killip for raising some of the points and, far from just the last 48 hours, I have certainly had a full seven days of responses and emails with Mr Killip. I do thank him for raising those issues with me. I know he has raised them with the Department previously as well. We are endeavouring to resolve these matters, but, as is pretty clear, at the moment the legislation that we have in place is largely unworkable, which makes it very difficult for us to make the amendments that we need to make.

I am a little bit concerned by the Hon. Member for Douglas West – or soon to be South – Mr Thomas's ... If he has any concerns whatsoever with anything he always comes and speaks to me, so I would be surprised if he retains any concerns about this piece of legislation and has not come and spoken to me, because that is obviously what he should do. If he is uncomfortable with the legislation, then of course he should vote against, but he should at least give me the opportunity to talk it through with him. I hope that I am just misunderstanding his comments there.

In relation to the Hon. Member for Douglas East – and that has not changed and is not about to – Mr Robertshaw, I think he raises a very important point in relation to appeals against the Department. Quite clearly, any significant change of any substance to the definitive map and statement will still be going to Tynwald. So, if we identify a dispute –

Mr Robertshaw: Mr Speaker –

Mr Gawne: Let me finish, and then you may not need to –

The Speaker: Are you asking the Member if he will give way?

Mr Robertshaw: Yes, I am, Mr Speaker.

The Speaker: Will you give way, sir?

Mr Gawne: I would like to just finish the point I am making, and then I am happy to give way at that point.

In relation to any significant or substantial change, it is still coming to Tynwald anyway for change.

The amendment also allows for if we identify a clear administrative error – so, for example, if there is a line drawn on the map which is clearly not where the footpath has ever been and there is substantial evidence to show that that is the case, then the amendment allows us to change that.

However, I am absolutely sure and can give full assurance to this House that if the Department were embarked on such a process we would clearly be going to speak to the landowner, and if the landowner disputed what we were finding then that would not, in my view, be an administrative change. That would be very clearly an issue that was under dispute, which would then need to go to Tynwald.

I hope that gives the Hon. Member for Douglas East the reassurance that he seeks, but I am happy to give way.

The Speaker: Mr Robertshaw.

Mr Robertshaw: Mr Speaker, I am grateful to the Minister for giving way.

It is just his definition: if he could please elaborate on the use of the words 'significant' and 'substantial'. Does this mean that the Department would act beneath that threshold without reference? And what is that threshold? Could he perhaps enlarge a little bit on his definition, please?

The Speaker: Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Yes, what I mean by that is anything that is disputed, I suppose. So if there is a dispute of any kind, I am absolutely confident that that would then need to come to Tynwald. If, however, there is a minor change on the map which is clearly evidenced – it has clearly been a slip-up on the part of the Department – then we can just go and change that without recourse to Tynwald. So that is what we are talking about here with this clause.

I believe that the clause, as now amended, makes an awful lot more sense than the original legislation. Certainly the original legislation, thanks to the repeal of the 1961 Act, is in effect inoperable anyway.

So I beg to move and I hope that Hon. Members will support this clause.

The Speaker: Hon. Members, clause 20, to which we have an amendment in the name of Mr Houghton: those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21, Mr Gawne, please.

Mr Gawne: Gura mie eu, Loayreyder – if I may move clauses 21 to 23, as they are related and relatively minor?

Clauses 21 to 23: these clauses relate to what is now described as 'the private street works code', namely the provisions of sections 94 to 98 of the Act.

The code addresses a situation in which an unadopted road has been or is made or opened up to the public by any person other than the Department of Infrastructure, or is not made up to the Department of Infrastructure's satisfaction. In such a situation, the Department of Infrastructure is empowered to do any works or make up and to claim from adjoining frontagers its expenses in doing so.

The clause makes no substantive amendment to the code. It merely expresses certain provisions in a better way.

I beg to move.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second.

The Speaker: Mr Malarkey.

Mr Malarkey: Mr Speaker, can I just ask the Minister: with existing roads that are in this condition, would this clause now bring those on board to allow the Department to go in and make up roads and bill those responsible for leaving them unmade-up?

The Speaker: Mover to reply.

Mr Gawne: Gura mie eu, Loayreyder.

The simple answer is yes, I do believe that this clause will assist. It tidies up the existing legislation. I beg to move.

Mr Malarkey: Excellent, good.

The Speaker: Hon. Members, clauses 21 to 23 having been moved and seconded, we shall vote on them in turn.

Clause 21: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 22: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

Mr Gawne: Gura mie eu, Loayreyder. Again, if I may move clauses 24 and 25, as they are directly linked?

The Speaker: As you wish, sir.

Mr Gawne: Clause 24 inserts a series of new sections containing what is described as 'the advance payments code'. The code supplements the law with respect to the making up of private streets.

Before a new building is erected adjoining a private street, sections 98A and 98C require that, subject to certain exemptions prescribed in section 98B, a sum likely to be required to meet the cost of the street works must be paid to the Department by the owner of the building land or a security given for it. It is for the Department to decide the form that a security should take.

If, in the event, too much is given, sections 98C and 98D provide for refunds to be made to the owner for the time being.

Once a payment has been made or a security given, section 98E provides that the liability of the owner for the time being is taken as having been discharged to the extent of the sum paid or secured. If not enough has been paid, the Department may recover the balance to the extent authorised by the private street works code. If, on completion of the street works, too much is found to have been given, the balance will be paid under that code to the owner for the time being.

If an owner gives notice that he or she does not intend to proceed with the erection of the building in question, section 98F provides for the repayment of any sum paid or the release of any security given.

Section 98G prescribes that certain matters are to be charges on land, whereas section 98H caters for interest to be paid on sums arising under section 98A.

Clause 25 substitutes a new section 99, containing interpretive provision for the purposes of the private street works code and the advance payments code. Due to the complexity of the codes, power is taken to amend them by regulations, subject to Tynwald approval.

I beg to move that clauses 24 and 25 stand part of the Bill.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second, sir.

The Speaker: I put the question that clauses 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 Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Clause 26: for the avoidance of doubt, this clause amends section 106A by expressly providing that the Department may continue to dispose, by retail sale or otherwise, of any minerals worked or got by it or arising as part of its ancillary activities.

As those ancillary activities are not necessarily for the purpose of any of the functions of the Department, but are rather in connection with them, Mr Houghton is tabling a departmental amendment to that effect.

I beg to move that clause 26 stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

This amendment seeks to clarify more precisely the carrying out of the Department's ancillary activities with respect to the quarry that it operates.

As originally drafted, clause 26 empowers those activities 'for the purpose of' any of the Department's functions, whereas, more accurately, it should say 'for the purpose of, or in connection with' any such functions.

The effect of the amendment is simply to clarify a situation that presently obtains.

I beg to move:

Amendment to clause 26

Page 35, line 17, for 'for the purpose of' substitute 'for the purpose of, or in connection with,'.

The Speaker: Mr Peake.

Mr Peake: Mr Speaker, I beg to second the amendment.

The Speaker: Hon. Members, dealing with the amendment, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 27.

Mr Gawne: Gura mie eu, Loayreyder.

This clause makes new provision by prescribing fines for offences under clauses 7 and 14.

I beg to move.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second.

The Speaker: I put the question. Clause 27: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 28, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

The definition of 'statutory undertaker' is defined so as to extend to operators of sewerage and sewage systems.

As Hon. Members will be aware, the Hon. Member for Douglas North, Mr Houghton, has tabled an amendment which refers to clause 20 in terms of definition of the definitive map and statement.

I beg to move clause 28.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
I beg leave to second.

The Speaker: And again, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

Clause 28 makes a necessary consequential amendment to the interpretive provisions of the 1986 Act in order to reflect that definitions for 'definitive maps' and 'associated statement' are now contained in section 92 of the 1986 Act by virtue of the substitution of clause 20.

I beg to move the amendment standing in my name, sir:

Amendment to clause 28

Page 36, after line 13 insert—

«(b) for the definition of “the definitive maps and statement” substitute—

“the definitive maps” have the meaning given by section 92(3) and “associated statement” in relation to a definitive map has the meaning given by section 92(4);».

Renumber the subsequent paragraphs of clause 28 accordingly.

The Speaker: Mr Peake.

Mr Peake: Mr Speaker, I beg to second the amendment.

The Speaker: Dealing with the amendment, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 29 and schedule 1B, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Consequent upon clause 7, this clause begins by prescribing the procedure to be followed before designation of an improvement line – for example, as to consultation and consideration of objections. It then prescribes what must be done on designation before setting out the action to be taken on revocation of an improvement line or part of it.

As Hon. Members will recall, clause 7 has granted the right of appeal to the High Bailiff for anyone who has any concern with this procedure.

I beg to move.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second.

The Speaker: I put the motion: clause 29. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 30, please.

Mr Gawne: Gura mie eu, Loayreyder – if I may move clauses 30 to 32 together?

The Speaker: As you wish.

Mr Gawne: Clauses 30 and 31 amend schedule 4, the road works code. The reference in the schedule to what constitutes reinstatement or making good is amended so as to enable the Department of Infrastructure to impose other requirements on undertakers in any given case, preponderantly when it considers that lesser requirements will suffice.

Provision is also made for the giving of directions by the Department of Infrastructure as to the timing of undertakers' works and for the issue by the Department of Infrastructure of a code of practice.

Consequent upon clause 14, clause 32 provides for the eventual repeal of schedule 4.

I therefore beg to move clauses 30, 31 and 32.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second, sir.

The Speaker: I put the motion that clauses 30, 31 and 32 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 33, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Consequent upon clause 16, this clause modifies the procedural provisions of schedule 5 so that they may apply where the Department of Infrastructure notifies an owner or occupier of land adjoining a highway that it proposes to execute works improving the access from the highway to the land. What schedule 5 as modified will do is enable the person to appeal within 28 days to the High Bailiff for the quashing or otherwise of the notice on certain prescribed grounds.

I therefore beg to move clause 33 stand part of the Bill.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second.

The Speaker: I put the motion. Clause 33: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 34, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Clause 34 repeals the Highway Act 1927, which is now redundant.

I beg to move.

The Speaker: Mr Houghton.

Mr Houghton: I beg to second, sir.

The Speaker: I put the question that clause 34 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the clauses stage of the Highways (Amendment) Bill, and, with that, the business of the House today.

The House will now stand adjourned until the next sitting, which will take place at 10 o'clock on 1st December in this Chamber.

The House adjourned at 12.09 p.m.