

3. Highways (Amendment) Bill 2015 – First Reading approved

Mr Corkish to move:

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

The President: We proceed to Item 3, Hon. Members, the Highways (Amendment) Bill 2015. I call on the Hon. Member, Mr Corkish, to take the First Reading.

Mr Corkish: Thank you, Madam President.

I wish to move that the Highways (Amendment) Bill 2015 be read for the first time.

Madam President, this wide-ranging Bill, which is promoted on behalf of the Department of Infrastructure, variously affects the law on highways.

For the information of Hon. Members, I think there has been arranged a set of explanatory notes which were circulated via email, which describe in plain terms the effects of the Bill.

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 payments code relating to the making up of private streets; and, finally, the better facilitation of highway amenities.

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 them and to acquire by agreement or compulsorily any land, including premises, lying between an improvement line and a highway. At this point I can assure Hon. Members 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 – or perhaps termed ‘a blackspot’ – to persons using it.

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. 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* – but 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. Again, the Department assures Hon. 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 install on highways equipment for the detection of traffic or other offences; it empowers the Department to remove debris or objects causing an immediate danger at the side of, over or within a highway; it additionally prohibits private owners of motor vehicles from misusing parking spaces to advertise the sale of their vehicles; and it 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 – it behoves me to advise Hon. Members that certain authorities in their responses to the public consultation have 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 do, where there is a disagreement about priorities between an authority and the Department, is enable the authority to act.

The Bill goes on, Madam President, 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 but may be summarised succinctly. 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 at present obtaining. Given that a local authority exercises certain planning functions, it is no longer considered expedient to involve the Department in approving an amenity. Duplication of other consents is disapplied. 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 to seven days. 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.

During the passage of the Bill in another place, a small number of amendments were carried.

The first, which affected clause 5, substituted in the Highways Act 1986 a new section 4, the purpose of which is to amplify what may be provided in a road adoption agreement, being an agreement for the adoption of a private road as a highway maintainable at the public expense. The new section is aimed at minimising, or even obviating, the related cost to the public purse by enabling an agreement to impose conditions on the road becoming a highway, to provide for the bearing of construction and maintenance expenses etc. and to include ancillary, consequential or incidental provision.

The second amendment, which substituted a new clause 20, involved the replacement of section 92 of the 1986 Act with a series of new sections. 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 their rectification.

The reason for adding provision on rectification was 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 used to circumvent the necessary processes before an adjustment is made to a right of way. The Department is of the opinion that the provision as now drafted fully meets, in a practical way, the concern about rectification expressed at Second Reading in another place.

The third amendment, which affected clause 26, clarifies more precisely the carrying out of the Department's ancillary activities with respect to the quarry that it operates. As originally drafted, clause 26 empowered those activities, 'for the purpose of,' any of the Department's functions,

whereas, more accurately, it should have said, 'for the purpose of, or in connection with,' any such functions. The effect of the amendment was simply to clarify a situation that presently obtains.

The final amendment, which affected clause 28, made interpretive provision in consequence of the substitution of clause 20.

All in all, the Department is sure that the Bill makes a material contribution to the improvement of highway law and in doing so promotes the public interest. As such, I commend the Bill to Hon. Members.

Madam President, I beg to move that the Highways (Amendment) Bill 2015 be now read a first time.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: I beg to second.

The President: No Member wishes to – The Hon. Member, Mr Coleman.

Mr Coleman: Yes, Madam President.

In another place I believe it was stated that, 'The problems that are within this particular Bill, we'll leave LegCo to sort out,' which gave rise to the Speaker in that place remonstrating with that other place about their abrogation of responsibility, in leaving it to this body.

Madam President, I think we have all been contacted by a member of the public with deep concerns about this and I have a great respect for that gentleman as he served with Hans Blix, looking into the finding of biological substances in Iraq and he was a highly qualified army officer who I have worked with and have great confidence in what he says. He has also worked on the Planning Committee.

Madam President, I am of the view that we should actually refer this to committee to consider it, because I suspect that there are things in there that we might find where the other place may not have acted with full diligence.

Thank you, Madam President.

The President: I think, Hon. Members, before we get to that we need to have the Bill before us with the First Reading, and then we could refer it to committee once it is approved for its First Reading, Hon. Member. Maybe we could come to that at a slightly later stage.

The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

This is a very mixed bag – this piece of legislation. It has got some very good provisions in it, but there are some very alarming provisions in it. If there were moves at a later stage for it to go to a committee then I would certainly support it.

In particular, the land grab clauses concern me. There are other issues I would maybe, at this First Reading, like to flag up for the mover to consider answering – maybe, if he has not got the information now, at a later stage. But is there anything in this particular Bill that will enable the extinguishing of highways without Tynwald consent? Because at the moment it is for Tynwald to have highways removed. So I would like some reassurance about that issue, because it is something that has cropped up a few times.

'To extend powers to acquire land or premises,' I think is quite a worrying one for the DOI. They are not the best at looking after the assets they have got and, certainly, to take on more land is a bit of a worry.

If we look at clause 8 as well, which is kind of linked to this, it is:

In the interests of highway safety [the Department] is empowered to require the corners of ... building to be rounded or splayed ...

I would like to know from the mover how that is going to be achieved. Is that going to be at the whim of an engineer in the Department that is going to be a *fait accompli*? I will give you an example of when we have officers making decisions. There was a major development taking place in the Island and this was to do with requirements of the fire officer, who required work to be undertaken. Thousands and thousands of pounds – we are talking tens of thousands of pounds – of design and construction was commenced, only for that officer to change and the new officer to say that those works were not required and something else was required.

It was an exception that, only the project was so far in, the developer of this private venture would have walked away – and this did not happen once; this happened a number of times, through planning and various other officials getting involved in the process, where the goalposts were moving constantly. So with regard to clause 8 and this power, I would like to know exactly how that is going to be exercised and what structure is going to be underneath there.

Clause 9 is the money-making clause. That is the one where they can install cameras, automatic number plate recognition and various other goodies that highway authorities up and down the United Kingdom make a lot of money out of.

I would like an assurance from the mover, as a Member of the Department, that if these items are going to go in they actually put them where they are needed. Nobody objects to towns, villages, schools and areas having sufficient devices to ensure people are not speeding, but what we have seen in the United Kingdom is that these are placed on roads that are not really near anybody, just as a money-making machine; and quite often they are in pointless locations. So can we have assurance that if they are going to install these devices, which clause 9 gives the power or extends the power – ‘amplifies the power’, as it says in the explanatory notes – that they will actually put them in places where they are required and not just use them in silly places as a revenue generator.

If we look at the policies that clauses 14 and 27 bring – the road works code applying to the opening of highways – the Department spent £600,000 renewing the Glen Darragh Road a couple of years ago and since then the water authority has opened that road up 12 times at least. Maybe the Member should take a look down there. What was a fantastic job done by the Department has now been destroyed. It is an absolute disgrace.

So it is important the Department has powers and acts upon, because after that amount of money and the lovely job that was done on that road, it is a mess. So will the powers be used effectively, is the question I have on that.

Again – concerns over the visibility splays. One engineer will give you one set of advice, another engineer a different set of advice. I served on the Kirk Michael Committee which was all surrounding visibility splays, so there was a great proportion of my political life dealing in this and what I learnt from it is that engineers do not always agree, so there has to be a system in place to ensure that if the Department says one thing, there is scope. Again, I know this is going to come under subordinate rules and regulations, but I would like to know what the Department has in mind.

Clause 26 – the quarry. I know a bit about this as well and this is a very sensible amendment to the Bill. The Department’s quarries quarry material. They are the only supplier of certain types of material and yet, due to an oversight in previous legislation, they effectively outlawed themselves – or one particular legal advice said they had outlawed themselves – from actually supplying this material to anybody other than themselves.

That is not what has been happening because for many years you could go to the quarry and purchase material. A competitor had got some legal advice and had this shut down, basically for their own commercial advantage. So this clause effectively brings back the ability for the Department to sell the material. I think it is important they have it.

Finally, on clause 28, again, I have already mentioned the appalling situation with the Glen Darragh Road – it is to do with the road works code.

So there are quite a few concerns I have in this Bill as we go through, but those are the things I would like the Member to react to at this First Reading and, as I said, if he has not got the

information to hand in his briefing then obviously at the Second Reading and clauses as we go through the Bill.

Thank you, Madam President.

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, thank you, Madam President.

I would like to ask the Member moving the Bill what his views would be if a committee were to be put forward at a latter stage; whether he would welcome that? Because my support for this First Reading depends on him having a positive reaction to that suggestion.

We were contacted very late in the day about this matter. However, those were legitimate matters that were raised and I do believe they are worthy of proper consideration and I believe such proper consideration could only be given by a committee. I welcome the suggestion made by Mr Coleman and I hope the mover might as well.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

I just want to give my support to the Hon. Member, Mr Coleman's comments because I too know the individual concerned and I think he has a remarkable and commendable record, particularly in Iraq in the service of the Armed Forces, and I respect his views and opinions, and I think a committee route may be the way forward.

I will also just make a very simple observation that I have no objection to devices, in one sense, because I think the Police Force in particular are struggling. Certainly in a village like Laxey, where there is a 20-mph speed limit, I think a speed camera could help save lives.

Thank you.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President, and I thank the Hon. Members for their input into this – rather a lot of them. Can I leave, perhaps, one of the final questions from Mr Cretney regarding referral to a committee to a little bit later?

Mr Turner had more to say about this – which I quite understand he did, because he spent considerable time at the Department of Infrastructure and will know a lot more about it than I. But he did say it was a mixed bag with some good points, which I was grateful for.

He mentioned about 'land grab'. I think I mentioned in my opening remarks that would be used sparingly and only when the Department has to; and I think for that we have to rely upon the responsibility and integrity of the Minister and Members of the Department. Ultimately, I think a lot of that decision-making will be referred back to Tynwald; as, indeed, lots of the items mentioned here would come back to Tynwald. Ultimately, Tynwald would have the final decision. Tynwald consent is required if we extinguish a highway anyway. So I hope that answered that part of the question.

The rounding and splaying of corners was seen by the Department as being helpful to road safety and that was only in proposed buildings, not the existing buildings and I would respectfully point out that perhaps if anybody was making a new road or a building now, that would be part of the responsibility, safety and commonsense of the Department to do that – but of course we take the point.

Money-making clauses – the Hon. Member referred to ... yes, reassurance. The speed cameras would be installed where needed only; and I thank Mr Wild for his points too. Again, road safety is becoming more and more important. There are more cars on the road, there is more speeding now

on roads. The fact that that could be introduced should be a safety aspect welcomed by Members and would only be, as I did say, when needed.

The road works code, statutory undertakers ... and refer there to gas, electricity, sewerage. They have a statutory right to open the roads and this power is seen to ensure the job is done properly. Again, I would ask that the Member has to defer to the responsibility and integrity of the Department, which is set up to provide the best facilities as possible for the highways.

Quarry material is currently limited to what we can do and this will allow disposal of any product when obtained.

Mr Cretney, in supporting Mr Coleman's view regarding referral to a committee – that reply will be issued to the concerns raised and I would ask you to wait for the response before asking to go to a committee. I would have to refer to the Department as to whether that would be seen as being a worthwhile intervention or not.

I know that a member of the public has written to all Members. There has been advice given from the Attorney General's department on this, pointing out that the individual had grasped this wrongly. The reason for the rewriting of section 92, in particular –

The President: Hon. Members, we are getting into a pickle here because we have not got that amendment before us.

Mr Cretney: And neither do we have the Attorney General's comments.

The President: No.

Mr Corkish: No, we do not. I am sorry. I accept –

The President: So I think that we can keep away from the communication that we have had and simply deal with the First Reading, and then we can discuss whether Council wish to have a committee.

It is for Council to decide; it is nothing to do with whether the Department wishes us to have a committee or not.

Mr Turner: They won't! *(Laughter)*

The President: So, Hon. Member, would you care to conclude your remarks.

Mr Corkish: Yes, I will. Thank you, Madam President.

I have read the introduction to the Bill. More will become clear at the Second Reading. I will take back the concerns which ... I note we have a member of the Department here today. I can further help the situation perhaps at Second Reading with the more technical points raised today, with any help that I can possibly give.

Can I conclude then, Madam President, by proposing that the First Reading of the Highways Bill be taken?

The President: The motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Bill read a first time.