

1. Marine Infrastructure Management Bill 2015 – Second Reading approved

Mr Corkish to move:

That the Marine Infrastructure Management Bill 2015 be read a second time.

The President: We come to the Marine Infrastructure Management Bill 2015 for Second Reading. I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

I would like to move the Second Reading of the Marine Infrastructure Management Bill 2015.

In moving the Second Reading of this Bill I will be brief in light of the fact that I gave a detailed breakdown of the Bill during its First Reading.

The purpose of this Bill is to provide a streamlined decision-making process for consent to development proposals within the territorial sea, to ensure a sustainable approach to marine development within the territorial sea, to provide a decision-making process that is clear for applicants and decision makers, and to provide power to adapt the law to reflect emerging technologies and developing approaches to marine activities.

The Bill provides for (1) a single consenting regime, (2) a compliance regime, and (3) the creation of marine plans and marine policy statements, as and when required.

It should be noted that the proposed consenting regime is similar to the UK's consenting regime; however, it is simpler than the UK process. This, it is hoped, will appeal to those wishing to develop in our waters as it will not be a totally unknown process but it will be quicker.

All in all, the Department is sure the Bill will make a material contribution to controlling emerging technologies and developing approaches to our marine environment. It will also reduce bureaucracy and hopefully provide a robust and streamlined consenting process.

During the First Reading of this Bill, Mr Anderson asked:

Can the hon. mover do some research and come back to me and say in the consultation process whether the shipping companies made any response to the proposed legislation ...?

I can confirm to the Hon. Member that the Department of Infrastructure circulated the consultation document to the shipping companies; however, none of the shipping companies responded to the consultation.

Madam President, I beg to move that the Marine Infrastructure Management Bill 2015 be read a second time.

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

The President: If no Member wishes to speak to the motion I will put it to you that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Marine Infrastructure Management Bill 2015 – Clauses considered

The President: We come, then, to the clauses.

Clauses 1, 2 and 3.

Mr Corkish: Thank you, Madam President.

If I may move clauses 1 to 3 together, these give the Bill its short title, provide for it to come into operation on one or more days appointed by the Department of Infrastructure, and set out various definitions for a number of terms used in the Bill.

I beg to move that clauses 1, 2 and 3 stand part of the Bill.

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

The President: The motion is that clauses 1, 2 and 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Corkish: Thank you, Madam President.

Clause 4 sets out the purpose and the basic principle of the Bill, which is to control certain marine activities as defined in clause 6.

I beg to move that clause 4 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The motion is that clause 4 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now I understand you would like to move clauses 5, 6 and 7 together.

Mr Corkish: Thank you, Madam President. Can I move clauses 5, 6 and 7 together.

Clause 5 applies the Bill to controlled marine activities and associated marine activities, as defined in clause 6, taking place or proposed to take place in the controlled marine area.

Clause 6 also makes provision to add, remove or amend an entry in the list of controlled marine activities by order. The clause also makes provision to specify classes of activity that are, or are not, to be treated as associated marine activities for the purposes of this Bill. The clause also allows the Department to give guidance as to the meanings of expressions in subsection (1) 'Controlled Marine Activities', or subsection (2) 'Associated Marine Activities'.

The controlled marine area is defined in clause 7, which is the area between the mean high water mark and the seaward boundary of the Isle of Man territorial seas. The clause excludes the harbour limits from controlled marine area. The clause will allow the Department of Infrastructure to make an order to exclude areas from or include areas within the controlled marine area.

Any orders made under clauses 6 and 7 would subsequently need Tynwald approval before they come into operation.

I beg to move clauses 5, 6 and 7 stand part of the Bill.

Mr Crookall: I beg to second.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

I would just like some clarification over clause 6(1) and (2) and wonder where fracking would appear and how it would be handled. Would it be an associated marine activity linked to the gas drilling or exploration, or would it be an uncontrolled activity? If you could just let me have some idea about that, please.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

I do have some information relating to fracking ... I am desperately trying to find it.

A Member: And drilling.

Mr Corkish: Sorry, Madam President, I cannot find it. Can I seek help from the member of the Department who is sitting in the Gallery, please?

The President: Could you state your name and your office, and do what you can to assist the Hon. Member with the question.

Mr Brooks: Thank you, Madam President.

My name is Ian Brooks. I am working on behalf of the Department of Infrastructure in relation to this Bill.

In relation to Mr Coleman's query, uncontrolled activities which do not fall within the scope of this Bill will actually be dealt with by the extant legislation, like the Harbours Act, the Water Pollution Act and any other Acts which are disapplied through this Bill.

Associated activities will be in connection with controlled activities. Obviously, we have not defined what those associated activities are as yet – those will be done through order – but they will be in connection with the controlled activities.

Mr Coleman: Am I allowed to ask ...?

The President: Yes, indeed. We need to clarify.

Mr Coleman: Thank you.

So, if someone comes along and they want to start using fracking, firstly, what is the approval process for it, and under what legislation would it be used?

Mr Brooks: I am not entirely sure, Mr Coleman. Potentially it may be under the Petroleum Act that may fall under. It may fall within clause 6(1)(g) as being the exploration and exploitation of natural gas and petroleum. Obviously, if someone does come forward with a proposal for fracking, they can seek clarification from the Department to see whether they would need marine infrastructure consent.

Mr Coleman: Fracking is linked to a number of the activities in clause 6 and it is done as a way of measuring the potential production rates from either petroleum or from gas, because basically what fracking does is fracture the rock strata.

Mr Brooks: That is correct, yes.

Mr Coleman: I just want to know that there is some control coming for it.

Mr Brooks: If we needed to further clarify that, Mr Coleman, then the Department would be able to add into that list to give further clarification, if needed.

Mr Coleman: Interestingly enough, they call it fracking now; 20 years ago they called it 'acidising and fracturing', where they were pumping acid down the pipes as well. That is what concerns me in a marine environment.

Thank you.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: If I could just ask for clarification from the officer in relation to this clause, it is my understanding that an order would have to come before Tynwald anyway.

Mr Brooks: That would be correct, yes, Mr Anderson.

Mr Anderson: That would cover some of the concerns being raised.

The President: Do you wish to reply as well, sir?

Mr Corkish: Thank you, Madam President.

I just wish to thank Mr Coleman for his question, and indeed Mr Anderson, but also Mr Ian Brooks from the Department for the clarification given.

I beg to move clauses 5, 6 and 7 stand part of the Bill.

The President: I will move them separately as there has been a query.

I will put to you clause 5 first. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 5, 6 and 7 stand part of the Bill.

Clause 8.

Mr Corkish: I think I am moving clauses 8 and 9, Madam President.

The President: Not on my list, but if you wish to, do so.

Mr Corkish: I am sorry. I can easily move clauses 8 and 9 separately.

The President: No, you can move them together if you wish to. It was not on the list that was sent to me.

Mr Corkish: Thank you for that indulgence, Madam President.

If I may move clauses 8 and 9 together, clause 8 sets out that marine infrastructure consent is a consent granted for the carrying out of controlled marine activities in the controlled marine area and that the consent may be granted only in pursuance of an application. A marine infrastructure consent may include consent for the carrying out of associated marine activities.

Clause 9 sets out that a controlled marine activity cannot be carried out in the controlled marine area, except in accordance with a marine infrastructure consent. It will be an offence to carry out controlled marine activities without a marine infrastructure consent or to carry out activities without complying with the terms and conditions of a consent.

The clause also specifies that controlled marine activities or associated marine activities in the controlled marine area do not require permission, consent or approval under any of the consenting regimes listed in the clause. The clause allows the Department, by order, to add an entry to the list or remove an entry from the list of consenting regimes.

Again, the order would require Tynwald approval before it comes into operation.

I beg to move that clauses 8 and 9 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Can I just comment on clause 9. I think this is quite important, and maybe the mover could clarify: is this particular the reason that makes it simpler? Because we do quite often find, looking for consent in other areas, that the number of different hoops you have to jump through and different processes ... Am I right in thinking that subclause (5) is the one that effectively makes the process simpler and gives it that one-stop shop without having to go through all those consenting regimes? He said it is slightly different in the UK. I am aware that in the UK they do have to go through, in some cases, multiple consenting regimes, so am I right in thinking that this particular is one of the clauses that makes this Bill a lot more desirable for those wishing to undertake the application process?

The President: The mover to reply.

Mr Corkish: I thank Mr Turner for his question.

Yes, indeed it does. That is part of the introduction I gave, that it is very similar to the UK process, but this will make it a lot easier for applicants for this purpose. So the answer, in short, is yes.

The President: I will move them separately, Hon. Members.

Clause 8: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Corkish: Thank you, Madam President.

Clause 10 sets out the steps required by the Bill in relation to the making of applications for marine infrastructure consents and provides a timetable for those steps to be undertaken. You will note there are references to this table throughout the Bill. This is to provide certainty to potential developers that applications will be considered in a timely manner.

The clause confers powers on the Department of Infrastructure, by order, to amend the timetable. There is also provision that such an order may enable the Council of Ministers to alter timings for specified applications or consents, which may include applications in process and consents already granted.

Again, these orders would require Tynwald approval before it comes into operation.

I beg to move that clause 10 stand part of the Bill.

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

The President: The motion is that clause 10 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.

Mr Corkish: Thank you, Madam President, I will move clauses 11 and 12 together.

Clause 11 requires a prospective applicant to consult various Government Departments and other prescribed persons before making an application for marine infrastructure consent. 'Prescribed' is defined in clause 60(1) and it means specified by the Department by order or regulations.

The clause also requires prospective applicants to analyse the responses, prepare and publish a consultation report.

The clause confers powers on the Department of Infrastructure to make regulations about the procedure to be followed on pre-application consultations and the form, content and publication of consultation reports.

Clause 12 requires prospective applicants to publicise their proposed application. The Department of Infrastructure must make regulations about the publication of proposed applications.

The regulations prepared under this clause would be subject to the negative procedure of Tynwald.

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

Mr Crookall: I beg to second, Madam President.

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

Clause 13.

Mr Corkish: Thank you, Madam President.

Clause 13 requires prospective applicants, before making an application, to carry out an environmental impact assessment. An environmental impact assessment is the process of assessing the likely environmental impacts of a proposal and identifying options to minimise environmental damage. The main purpose of the environmental impact assessment is to inform decision makers of the likely impacts of a proposal before a decision is made. An environmental impact assessment provides an opportunity to identify key issues and stakeholders early in the life of a proposal so that potentially adverse impacts can be addressed before final approval decisions are made.

The clause also confers powers on the Department of Infrastructure to make regulations about the process, form and content of environmental impact assessments. The Department will be looking at best practice to help in the preparation of the regulations. The regulations prepared would be subject to the negative procedure of Tynwald.

I beg to move that clause 13 stand part of the Bill.

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

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Yes, I fully support this clause. Environmental impact assessments are a very important part of the process.

Maybe at this stage the mover could confirm that any harbour developments that, for example, would put in place a marina development ... would that development fall within this legislation or would it be outside this legislation? Potentially, that could be quite a big development in the future.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

In answer to Mr Anderson, my belief is that it does not fall into this, but I can certainly make representation to the Department. I am fairly sure that it is outside.

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

Clause 14.

Mr Corkish: Thank you, Madam President.

Clause 14 would allow the Department of Infrastructure to give guidance about pre-application consultation, publication and environmental impact assessment. It should be noted that any prospective applicant must have regard to any guidance given to them by the Department.

I beg to move that clause 14 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Clause 15.

Mr Corkish: Thank you, Madam President.

Clause 15 relates to scoping opinions. Scoping Opinions are a precursor to carrying out an environmental impact assessment. A scoping opinion will be the Department's formal view on what issues an environment statement should contain. The scoping process aims to identify only the issues that are significant and it can conclude that only one or two issues need to be covered in a statement. This clause sets a mandatory requirement for a prospective applicant to request a scoping opinion from the Department of Infrastructure before carrying out an environmental impact assessment.

Applicants will also be required to serve notice on the Department of their intention to apply for a scoping opinion. This is to ensure the Department and other Government Departments are prepared to carry out the scoping opinion.

A scoping opinion must be accompanied by a fee, which will be prescribed in accordance with clause 53.

The clause also requires that a request for a scoping opinion must be accompanied by a scoping report. Regulations will specify what information is to be included in a scoping report.

The Department will be required to consult various Government Departments, Manx National Heritage and any other person the Department thinks appropriate.

The clause confers powers on the Department to make regulations about the content of scoping opinions and the handling of requests for scoping opinions. The clause also stipulates that the scoping opinion has effect for the period of two years beginning with the date of issue. The scoping opinion must be included in the register of consents.

The regulations prepared under this clause must be laid before Tynwald and will be subject to the negative procedure.

I beg to move that clause 15 stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I do dislike some modern jargon – all this 'blue-sky thinking' and ... I have got a list of these phrases that I dislike. I think I am going to add 'scoping opinions' to that list, because it is something I have not come across that often before.

Nevertheless, I have got some questions for the mover about this.

I am just trying to understand the process. Clause 11, which is the applicant:

(1) Before making an application for ... consent ... must consult —

So I think it is right – the applicant is applying, so they have got to consult the DOI, DEFA, and so the list goes on. Then it has got the scoping opinions. Is this the Department asking the bodies there, such as DEFA and Manx National Heritage, what they would like to see in the environmental impact

assessment, as in the areas of concern, and therefore the applicant then goes off, looks at all those issues and then comes back, and then has to consult again to say, 'Well, this is what you wanted us to look at, this is what we have found; now we will consult with you on the results'? Because obviously there are three stages here that we are looking at. We are looking at the consultation before application, a scoping opinion and an environmental impact assessment.

So I am just wanting to be clear on the process, because obviously it is the Department of Infrastructure that is then consulting the other Departments on the scoping opinion, not the applicant, and then the applicant goes off and does the environmental impact assessment. So that stage, presumably then, is before the formal application.

I hope I have made it clear – or have I just confused the mover, in which case I will be happy to clarify! *(Laughter)*

The President: It does come under the heading 'Pre-application requirements'.

Mr Turner: Yes. I am just wondering the exact order and have I read that correctly.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Yes, can I further add to the confusion by asking for a definition of 'consultation' in relation to this? Where it says that the applicant must consult with the Department, does that necessarily mean that the Department must agree to the process, rather than just saying, 'We'll let you know'? Does it formally mean that the Department has to agree to the process, or is it merely a way of informing them? Do they have to get their agreement on the format by this word 'consult'?

I hope that does not confuse the Member.

The President: It is set out in the regulations, isn't it?
Sorry! *(Laughter)* The mover to reply.

Mr Corkish: Madam President, I can agree with you: it is set out in the regulations. *(Laughter)* I can also agree with other Members who have spoken that yes, confusion reigns.

The scoping opinions, yes, that is a new phrase. I thought that Members might pick up on another phrase which is being used, which is 'negative procedure'. I did some research on that, but nobody has asked about that. **(A Member:** It's coming!) I can give it, if needed – it is part of the Information Act.

Can I, because of the complexity of the questions asked, defer again to the member, Mr Brooks, in the Department, regarding the procedures that the Department would have to take?

Mr Brooks: Thank you, Mr Corkish.

To Mr Turner's query, in terms of the actual process what would happen is that the scoping report would come to the Department. That is the precursor to any consultation. The Department will then look at that scoping report and then provide a formal scoping opinion to them. It is further clarified in that table in clause 10. It says that the scoping opinion is ... when it is to be issued, and then row 4 has the heading 'Pre-application consultation'. It refers then to clause 11:

Consultation must —
(a) begin after the issue of the Scoping Opinion;

What I would envisage, and which is has happened in English waters, is that the developer would consult on their preliminary environmental information based on whatever scoping opinion has been provided.

Mr Turner: Could I –

The President: Yes.

Mr Turner: Thank you, Madam President.

So the opinion would be, obviously, the opinion of the Department after consulting the necessary bodies. The scope – would that be drawn up by the applicant as in the scope of the project they are going to undertake?

Mr Brooks: That is right. The scoping report would cover a number of headings, so they would say, ‘This is what the proposed development is going to be’, then they look at various topics like aviation and marine ecology, and then start saying, ‘What are the issues that we are either going to be scoping in or scoping out?’ based on what information they have at hand. If they scope something out, the Department, through that scoping opinion, can actually say, ‘Actually, no, you need to be able to scope something back in.’

Mr Turner: Thank you.

The President: The mover to reply.

Mr Corkish: Again, I thank Mr Turner for his question and also Ian Brooks in the Department for the clarification.

I did say earlier on in my introduction that this process is simpler than the UK – perhaps it is not. Madam President, I beg to move that clause 15 stand part of the Bill.

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

Mr Corkish: Thank you, Madam President.

Clause 16 will confer powers onto the Department to make regulations about the provision of advice and assistance to actual and prospective applicants for marine infrastructure consent and persons who are or may be interested in an actual prospective application.

The clause also allows regulations to be made that may include provision for allowing persons to apply to the Department of Infrastructure for an opinion as to whether particular activities would require a marine infrastructure consent.

The regulations prepared under this clause must be laid before Tynwald and will be subject to the negative procedure.

I beg to move that clause 16 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The motion is that clause 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 17.

Mr Corkish: Madam President, clause 17 will give powers to the Department of Infrastructure to authorise a prospective applicant to serve a notice on a person requiring the person to give details of any interests that may be affected by the proposed controlled marine activities or to give details of a person who might be able to give details.

It is important to understand that details of interests means the names and addresses of a person who has an interest that may be affected by a proposed controlled marine activity.

The clause also makes it an offence to fail without reasonable excuse to comply with a notice.
I beg to move that clause 17 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The motion is that clause 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 18.

Mr Corkish: Madam President, clause 18 sets out the powers of entry in relation to carrying out a survey or inspection or obtaining information in connection with an actual or prospective application.

The clause also stipulates that section 36 of the Local Government Act 1985 applies to entry by virtue of this section as it applies to entry by section 35 of that Act.

I beg to move that clause 18 stand part of the Bill.

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

The President: The motion is that clause 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now you wish to take clauses 19, 20 and 21 together.

Mr Corkish: Thank you, Madam President.

In moving clauses 19, 20 and 21 together, clause 19 requires an application for a marine infrastructure consent to be made to the Department. The clause also specifies what must accompany an application and specify the controlled marine activities and associated marine activities for which it is required.

The clause also allows the Department to publish guidance about compliance with this clause and the applicant must have regard to that guidance. The Department may publish technical standards for any documents or information required by order under this clause and the applicant must comply with those standards.

The clause also requires an applicant to give notice to the Department of Infrastructure, Department of Economic Development and any other prescribed person that he or she will be applying for a marine infrastructure consent.

Once an application is received, the application is placed on the public register, which the Department must maintain under clause 20.

Under clause 21, an application for a marine infrastructure consent must be accompanied by a declaration stating that the application complies with the provisions of clause 19. If it becomes clear the application does not comply, the Department may discard the application or vary the timetable to allow time for the completion of compliance with clause 19.

I beg to move that clauses 19, 20 and 21 stand part of the Bill.

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

Can I just ask the Hon. Member moving this, with regard to looking at this one compared to clause 15 –

The President: You did reserve your remarks, but we'll let you get away with it!

Mr Crookall: Thank you.

In section 8 of 'Form of application':

Before making an application the applicant must give notice to –

- (a) the Department;
- (b) the Department of Economic Development;
- (c) the Department of Environment, Food and Agriculture; and
- (d) any other prescribed person.

we have missed out MNH, whereas in clause 15 we have MNH; but we have this wording of 'any other person' that the Department thinks appropriate. I am just wondering why that does not go in, which covers everybody anyway. Is there any reason why they have missed out MNH in clause 19 when it is in clause 15?

The President: Does no other Member wish to speak?
The mover to reply.

Mr Corkish: I thank my seconder for pointing that out. I can only refer to the Department. I presume that it was thought, by the wording 'any other prescribed person' applying for marine infrastructure, to encompass all the relevant ... certainly MNH, as mentioned earlier, but I can double check that with the ...

Can I ask for a clarification, if that is the case, or is there a reason why that has been left, Madam President, if it is a problem for Mr Crookall?

The President: You can do it, but there are two separate lists with two different sets of people.

Mr Corkish: Yes, indeed.

The President: Would you like to respond, Mr Brooks?

Mr Brooks: Thank you, Madam President.

In the scoping opinion, why we are consulting with MNH is because obviously we are looking at the environmental issues and trying to get their information ... which they will be able to assist the Department to formulate that scoping opinion.

What the notice is doing is just putting everyone on notice that the application is imminent. It may not come in, but it is just a notice to say we are intending to actually put the application in.

If the Department felt that MNH should be a prescribed person, then we can do regulations to be able to include them.

The President: Do you wish to add to that, sir?

Mr Corkish: Only to thank Mr Brooks for his clarification. I hope that answers that question proffered by Mr Crookall.

The President: I will move them separately, Hon. Members.

Clause 19: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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

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

Clauses 22, 23 and 24.

Mr Corkish: Thank you, Madam President. I move clauses 22, 23 and 24 together.

Clause 22 requires the Department to refer an application for marine infrastructure consent to the Council of Ministers without delay, subject to clause 21(2), and requires the Council of Ministers to refer it for examination in accordance with clause 25(1). The Council of Ministers must notify the applicant that the application has or has not been accepted for examination.

Under clause 23, the Council of Ministers must also notify various Government Departments and other prescribed persons that the application has been accepted and of the date of the preliminary meeting in respect of an accepted application.

Clause 24 allows regulations to be made about public consultations. The regulations would be laid before Tynwald and would be subject to the negative procedure. The clause also requires the Council of Ministers to make arrangements for a public consultation on an application in line with any regulations made under this provision.

I beg to move that clauses 22, 23 and 24 be a part of the Bill.

Mr Crookall: Thank you, Madam President.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

When we we look at clause 3, 'interested parties', it says, 'has the meaning given by section 24'. It does not specifically say who those interested parties are, so reading, in particular, clause 24(1)(a), where it says:

make arrangements under which persons with an interest in the 29 application can register ...

does that effectively mean any person or body?

It depends what you call an interest. An interest could be, obviously, the landowner – in this case it is the seabed, so it would be whoever is responsible has got an interest – but would it include the likes of environmental lobby groups who are interested in what is going on, and would they then simply, under this process, make an application and say 'we have an interest in the application' – so it effectively means anybody?

I wondered whether the regulations will apply some sort of ... a bit like planning, where you might be interested in it, but actually you have got no status as an interested party. If the process is to be simpler, then obviously you want the key interested parties for the genuine interest, rather than people who just want to derail the process by throwing in an interested-party status, when in fact they do not have those rights. How is that going to be applied?

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Could I ask the mover, on clause 24(2), why it is 'may' issue guidance about the application, rather than 'shall'.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

Referring to Mr Turner, that is correct that ... I think we have, within the Bill, reasons to address those matters of vexatious or flirtatious ... I think 'flirtatious' was the word ... to the Council of Ministers.

Mr Turner: No, it's not! *(Laughter)*

Mr Cretney: It's not flirtatious.

Mr Corkish: Well, it sounds –

Mr Turner: 'Frivolous', not 'flirtatious'.

Mr Corkish: ‘Frivolous’ might be a better ... Thank you very much for that correction, but ‘flirtatious’ might fit in some sections as well!

I am sorry, the first part of your question, Mr Turner?

Mr Coleman: *Locus standi*.

Mr Turner: Yes. Basically, what standing would those having an interest ... You could have people whose policy is just to object to windfarms or mineral extraction, so they could just register just simply to become an obstacle.

Mr Corkish: Madam President, yes, I think great care is taken throughout the Bill that all interested parties are given the opportunity to register their reasons or not for, whatever, this happening. Also, the examiner is able to identify the principal shareholders, so I would like to think that throughout the Bill adequate coverage is given to those persons who would have an interest, but also the frivolous and vexatious complaints would be sorted.

Mr Cretney brings a technical issue to the debate as to whether the word ‘shall’ should be used instead of ‘may’. That would be a matter for the drafter, I would suggest, the Department – unless there is a view from the Department, Madam President, but it is a technicality.

The President: I think it is a view for the Council to determine if it wants to change it, but –

Mr Corkish: Indeed. I will be guided by the wording of the Bill and by the Council whether clause 24(2), ‘the Council of Ministers may issue guidance’, or the Council of Ministers ‘shall’ issue guidance.

The President: Hon. Members, if no one else has any comment, the motion is – and I will take the clauses separately – that clause 22 stand part of the Bill. 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: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move on to clauses 25, 26 and 27.

Mr Corkish: Thank you, Madam President. Clauses 25, 26 and 27.

Clause 25 requires the Council of Ministers to refer an application to an examiner or a panel of examiners. The clause makes provision for a single examiner to request that an application be referred to a panel of examiners. The Council of Ministers would be required to comply with that request.

The clause also makes provision for the Council of Ministers to refer an application before or during an examination of an application by a single examiner to a panel of examiners.

Clause 26 defines the term ‘examiner’. The clause also confers powers on the Department of Infrastructure to make regulations about the resignation, removal and replacement of examiners.

Clause 27 will give power to the Council of Ministers to appoint examiners to a panel and appoint one of those examiners as chair.

The clause also confers powers on the Department of Infrastructure to make regulations about the resignation, removal and replacement of examiners and to make provision for the consequences of changes to the panel to ensure continuity of the examination.

The clause makes provision to allow a panel to allocate part of its consideration of an application to one or more members. The clause also deals with how decisions of the panel are dealt with.

I beg to move that clauses 25, 26 and 27 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Could I just ask about the involvement of Council of Ministers in this process. Surely the Council of Ministers set the policies. Why is it, then, that these applications are going to be effectively going through Council of Ministers when Departments are given the statutory powers to get on and operate these procedures? Why is it then that the Council of Ministers are getting involved in what is the operation of a policy that they have laid down? Is there anything clear on that? They have the power to direct Departments anyway, so surely once they have decided there is going to be a policy of marine planning, infrastructure management, as this is ... if they are deciding they are going to accept the policy of allowing the territorial waters to be used for various things, why isn't the Department allowed to get on and exercise those functions?

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Maybe the mover could just confirm my understanding that this would be the same as the planning application process.

The President: The Lord Bishop.

The Lord Bishop: Madam President, may I ask the mover about clause 27(4), the allocation of 'consideration of an application to one or more members', assuming that might be one, and 'anything done or decided by ... [that member] is to be treated as having been done ... by the Panel', and that person must be unanimous in his her decision. Is that a normal practice?

A Member: For one person to be unanimous?

The Lord Bishop: One person being unanimous.

The President: It does also say it may be 'one or more'.

The Lord Bishop: Or more, yes, that is what I said.

The President: Perhaps this is a drafting issue.
The mover to reply.

Mr Corkish: Thank you, Madam President.

Yes, it is a drafting issue.

I am not sure how this relates to planning applications. Mr Anderson may agree that it does refer and align itself to planning applications.

I am more than glad that Mr Brooks from the Department is here if it is a drafting issue, or there may be a reason the Department has termed it this, and certainly relating to the Council of Ministers' involvement.

The President: Yes, but before we go to Mr Brooks, the Lord Bishop would like to clarify his enquiry.

The Lord Bishop: Sorry, it was not really a drafting issue. I understand that in drafting terms I suppose this is more or less the only way to put it. I was concerned that one person could ultimately make a decision on behalf of the whole panel and that that decision apparently would be final.

The President: Do you wish to reply, sir?

Mr Corkish: Just to reply to the Bishop, I hope, yes, one person, an examiner, would be appointed, but if there were complex issues that examiner could have recourse to other help.

I do not know whether that addresses your answer or not, Lord Bishop.

The Lord Bishop: It was essentially that, in the end, the whole of the decision of the panel could rest on a single person's opinion without apparently – and it may be wrong – consulting the others. That is all. And I was just wondering, if that is normal under various planning processes, then there must be a way of interpreting it, but at face value it looks a little bit risky.

The President: Can we perhaps ask the learned Acting Attorney General – I think there is a distinction between (3) and (4).

The Acting Attorney General: Thank you, Madam President.

There is that distinction which you have identified, that (4) is only a consideration of a *part* of the application. So you can certainly see a situation where there may be a matter which may be in the expertise in one of the panel members and he is sent off to take the evidence and reach a conclusion. He would have to bring that back to the panel to make its decision under subsection (3).

The Lord Bishop: Okay, thank you.

The President: I will now move the clauses separately, Hon. Members. Clause 25: those in favour, please say aye –

Sorry, did you wish to –

Mr Turner: We were going to –

Mr Corkish: Yes, sorry, I was just seeking clarification if I could go to Mr Brooks.

The President: I am sorry. On Mr Turner's?

Mr Corkish: If I may, yes.

Mr Brooks: Thank you, Madam President.

Why the Council of Ministers is going to be the the decision maker in this process is because the Department of Infrastructure have a vested interest in the process. So it is trying to make the process open and transparent and not have any accusations that the Department are acting in their own interests.

Say, for example, if a windfarm proposal comes into our waters – obviously, there is a developer looking at that – there are a number of interests which the Department have: (1) the seabed; (2) we actually operate the ports, so it could potentially impact on the harbours; and (3) it could potentially impact on the Airport in terms of its radar. So the purpose is to try and make it not the Department making the decision and making it essentially an independent body, which is going to be the Council of Ministers, to actually make that decision.

Mr Turner: I thought that was their job.

The President: Do you wish to add anything, sir?

Mr Corkish: Just again to thank Mr Brooks from the Department. I hope that that answers the question. And also to thank the Acting Attorney.

I beg to move that clauses 25, 26 and 27 stand part of the Bill, Madam President.

The President: Clause 25, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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

Clause 27: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 28 and 29.

Mr Corkish: Thank you, Madam President. Clauses 28 and 29.

Clause 28 requires an examiner or a panel to make an initial assessment of the principal issues arising in relation to an application and to identify the principal stakeholders for the purposes of the application in addition to persons who are registered as interested parties.

The clause also requires an examiner or a panel to determine the procedure for examining the application and set a provisional timetable for the examination. They will also be required to consider the application and any written submissions made with respect to it.

The clause also makes provision for any irregularity in relation to the appointment of an examiner or panel, or in relation to the procedure for the examining of the application, not to affect the validity of the examination proceedings.

Clause 29 requires an examiner or a panel to hold a preliminary meeting and invite any person who they think likely to wish to participate. The clause requires the examiner or panel to explain the process determined for the examination of the application, the timetable proposed for the examination and the principal issues expected to arise in relation to the application.

The clause also confers powers on the Department of Infrastructure to make regulations about the nature and procedure of preliminary meetings. The regulations are required to be laid before Tynwald and will be subject to the negative procedure.

I beg to move that clauses 28 and 29 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Clauses 30 and 31.

Mr Corkish: Thank you, Madam President.

Clause 30 requires the examination of an application in the form of consideration of written representations unless the examiner or panel hold a hearing into any aspect of the application or they decide to conduct part of the examination otherwise than by considering written representations.

The clause also confers powers on the Council of Ministers to make regulations about which written representations are to be considered, not to be considered, or may be considered, and about the consideration of written representations.

Clause 31 requires an Examiner or Panel to hold a hearing into specific issues if they think it is necessary to ensure that the issue is properly examined, and the principal stakeholders have an adequate opportunity to state their case.

The clause also confers powers on the Department of Infrastructure to make regulations about the nature and procedure of specific-issue hearings. The regulations may confer discretionary functions on the examiner or panel, make provision for the prevention of disruption, make provision about costs and expenses, or make provision about information that is or may be of relevance to national security or defence.

Both clauses give powers to the examiner or panel to disregard representations which they consider to be frivolous or vexatious.

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

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

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Yes, could I just ask, in terms of clause 30(2), again it says:

The Council of Ministers may make regulations about —
(a) which written representations are to be considered, are not to be considered,

— and then, at the bottom, it says, under (3) —

The Examiner or Panel may disregard representations which they consider to be frivolous or vexatious.

I just wonder, for somebody who, in their opinion, is putting their representations forward in a non-frivolous or vexatious way, would it not be better to make sure that there are regulations set out, rather than just saying they *may* make regulations. Surely they *should* make regulations so that people who are making representations know where they stand.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

This was supposed to be a streamlining if there was no need for further investigation. The Hon. Member makes a good point, which I cannot answer. It is a point of view which is offered. Whether there is a definitive answer to that, or whether this is a drafting issue — again, can I defer to the Department?

The President: You can refer to the officer —

Mr Corkish: To the officer, sorry.

The President: He is not the Department. (**Mr Corkish:** Sorry.)
Mr Brooks.

Mr Brooks: Thank you, Madam President.

It is the Council of Ministers that is the final decision maker, and obviously the regulations would be in their power to make. In terms of what they consider, that will be up to the Council of Ministers to decide what they put into any regulations, if they do, but in terms of vexatious representations, I would assume that an examiner would make reference in their report that there have been these representations, so they are not going to be lost but they need to be taken into account, and saying why they have disregarded those representations, so that the Council of Ministers, when making their decision, are aware of that as well.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

Isn't the clue to this in the construction of the sentence: 'may' — permissive — 'disregard representations which they consider to be frivolous or vexatious', not which *are* frivolous or vexatious? In other words, the panel has come to the view that they are frivolous or vexatious, they may not be frivolous or vexatious, so that is why the permissive form of 'may' rather than 'shall'.

Is that not right?

Mr Corkish: I am sure it is.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: I am rather reluctant to speak in the terms that the Bishop speaks, but surely not every case will need this to happen; therefore, 'may' is totally appropriate. (**A Member:** Yes.) Where the cases do require it and they are complex enough to deserve the further consideration in this manner, then they can make the regulations. So I have no problem with 'may'. It means that they do not have to do it on every occasion. Especially when the legislation is in and running, there may be occasions where you have a particular situation coming up which has been looked at before, in which case then 'may' is totally applicable rather than 'shall'. I think it just streamlines it. You do not do it for everything, if you do not need to.

The President: The mover to reply. Oh, sorry, the Hon. Member, Mr Cretney.

Mr Cretney: I know the proceedings in here are a little bit more flexible, so I –

The President: Yes, and you may speak again, sir.

Mr Cretney: Thank you very much.

I just thought, under clause 30(2), 'The Council of Ministers may make regulations', that they were general regulations rather than specific to any particular case. So, in that instance, I think my colleague is wrong.

The President: If there is no comment, I call on the mover to reply.

Mr Corkish: Thank you, Madam President.

I accept, of course, the comments made by the Lord Bishop.

Looking to Mr Coleman, I agree with him too. All applications are considered, written, and if there was deemed to be no further problem this is a streamlining of ... no need for further investigation. That is the essence of what was trying to be carried out here. That was the purpose of this particular clause. However, I may look to the learned Acting Attorney for any guidance here – is there a problem with the drafting of this – Madam President.

The Acting Attorney General: Madam President, just briefly, I do not believe there is a problem with the drafting; it will have been drafted in accordance with the Department's wishes.

I can only defer to what the Lord Bishop says. It is quite clear that they may or may not. There is no compulsion here to actually make the regulations.

Mr Corkish: I thank the learned Attorney for that clarification and I hope that answers the question properly, Hon. Members.

The President: I put to you clause 30, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 31: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 32.

Mr Corkish: Thank you, Madam President.

Clause 32 allows an examiner or panel to hold a public meeting about an application. If a public meeting is held, the clause requires the examiner or panel to provide such opportunities as they think appropriate for anyone to speak about the application and for the applicant to make representations about the application or to respond to comments and questions from the public or stakeholders.

The clause also confers powers on the Department of Infrastructure to make regulations about the nature and procedure of public meetings. These regulations would be laid before Tynwald and would be subject to the negative procedure.

I beg to move that clause 32 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Clauses 33 and 34.

Mr Corkish: Thank you, Madam President.

Clause 33 makes provision for the appointment of assessors to assist in the examination of an application.

Clause 34 makes provision for the appointment of legal advisors to advise and assist in the examination of an application.

I beg to move that clauses 33 and 34 stand part of the Bill.

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

The President: The motion is that clauses 33 and 34 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 35.

Mr Corkish: Thank you, Madam President.

Clause 35 requires the examiner or panel, on completion of their examination, to notify the Council of Ministers without delay and submit a report to the Council of Ministers as soon as is reasonably practicable. The Council of Ministers will be required to inform the applicant as soon as is reasonably practicable that the examination has been completed.

The clause also requires the report to include recommendations about the determination of the application. If the report recommends that a marine infrastructure consent should be granted, it must include a draft consent.

I beg to move that clause 35 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Clause 36.

Mr Corkish: Thank you, Madam President.

Clause 36 requires the Council of Ministers to decide whether to accept the recommendations of the examiner or panel and, in making a decision, they must have regard to any marine plan, marine policy statement, any prescribed matters and any other matter which they consider relevant and important.

The clause also gives powers to the Council of Ministers to disregard representations which they consider to be frivolous or vexatious.

If the Council of Ministers accepts a recommendation to grant a marine infrastructure consent, the clause requires them to issue the consent in the form of the draft in the report of the examiner or panel, or with modifications. The clause also requires the Council of Ministers to publish a statement of their reasons for their decision. The clause requires the statement of reasons to be sent to the applicant and every registered interested party.

The clause also confers powers on the Department of Infrastructure to make regulations about the procedure to be followed in determining an application. The regulations would be laid before Tynwald and would be subject to the negative procedure.

Furthermore, the Council of Ministers must publish the examiner's or panel report as soon as is reasonably practicable. This would be once the Council of Ministers have made a decision on the application. The release of the report any sooner may generate external lobbying, which may prejudice the decision making process.

I beg to move that clause 36 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

This comes back to my question earlier. Obviously, this is quite similar to the planning applications but it comes back to what I was saying before about whether it is, or not, the right way to go.

How does this differ from the UK system? Is it the fact that the British Cabinet get these and follow a similar process for this regime? Maybe he could explain, because obviously we have got the Council of Ministers making some regulations and we have got the Department of Infrastructure making some regulations. I am still of the view that the Department ... Notwithstanding they have got an interest, they are the Department charged with exercising the functions and the policies handed down from the Council of Ministers, so shouldn't they be getting on with it? And we have, of course, the panel making their representation based on all the evidence, but it appears that the Council of Ministers could then just decide not to accept that. Surely the panel should be considering all these issues that the Council of Ministers have to have regard for when accepting or rejecting. So how is this different and what is the procedure in the UK?

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

I thank Mr Turner for his questions. I obviously cannot tell him how our procedure is going to differ from the UK. I can seek assistance from the officer, if I may.

The President: If you wish, sir.

Mr Brooks: Thank you, Madam President.

In relation to Mr Turner's query, it is fair ... the process is very similar to the UK process in that an application goes to the Secretary of State but it is handled by the UK Planning Inspectorate, which has examiners and a panel of examiners who would report to the Secretary of State. So that is very like what we have got here, that the application will go to the Council of Ministers, be examined by an examiner or a panel and they would be reporting to the Council of Ministers.

The only difference is the timescale. What we have tried to do is shorten the timescale in terms of determining the application, trying to be as quick as the UK process. That is the only difference, essentially.

Mr Turner: Thank you.
Could I –?

The President: Yes, you may.

Mr Turner: The Secretary of State, of course, is not the Cabinet. The Secretary of State is fairly equivalent to our Ministers, who have the powers to exercise those functions. When you say the Secretary of State, which department handles the application and which department ...? Which Secretary of State are you referring to in that process; and is it the same department, or is it a different department?

Mr Brooks: It depends on the proposal that is being submitted. If it is a nuclear power station or a windfarm, they would be dealt with by the Secretary of State for Energy and Climate Change. If it was the proposal for the M6 road link from Heysham to the M6, that was considered by the Secretary of State for Transport. It depends on the proposal which Secretary of State actually deals with the examiner's report.

Mr Turner: But it would not go to the Cabinet.

Mr Brooks: It would not go to the Cabinet, no. It would just go to the Secretary of State.

Mr Turner: So, really – to the mover, Madam President – that was my question as to why, in our process, it is going to the Council of Ministers, because I still think that where the functions are given to the Department, as is the case in the United Kingdom, why aren't we allowing the Department, having set the policy, the ability to get on and exercise those policies? Why is it then going back for operational matters in the Council of Ministers, when it clearly does not in the United Kingdom?

The President: Do you wish to continue with your reply, sir?

Mr Corkish: Thank you, Madam President.

I cannot answer the Hon. Member. That is the process that we have adopted here.

I thank Mr Brooks for his very detailed response.

I can revert and come back to the Hon. Member if he were to wish for – well, he will – more clarification. I am very happy to do that, and for my understanding of it as well.

Madam President, will that suffice?

The President: You are still moving it.

Mr Corkish: I beg to move that clause 36 stand part of the Bill.

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

Clause 37 with schedule 1, and clause 38.

Mr Corkish: Thank you, Madam President.

If I may take clauses 37, 38 and schedule 1 together, clause 37 allows the Department of Infrastructure to make regulations about the content of a marine infrastructure consent. This clause and schedule 1 set out what can be included within a marine infrastructure consent.

The regulations would be laid before Tynwald and would be subject to the negative procedure.

Clause 38 allows a marine infrastructure consent to include provision for removing or modifying a requirement for permission only if the person responsible for giving permission agrees to the inclusion of the provision.

The clause also precludes the insertion of a provision authorising the discharge of water into inland waters or underground strata unless the person authorised to make the discharge has statutory responsibility for discharges into those waters or strata.

I beg to move that clauses 37 and 38, and schedule 1 be part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: If I may just ask for clarification –

The Acting Attorney General: Yes, Madam President.

The President: In the schedule, in 11(c), is the reference to a fine ‘cannot be higher than level 3 on the standard scale £5,000’. Is there provision for £5,000 to change if level 3 on the scale changes?

The Acting Attorney General: There is, Madam President.

The President: Right, thank you.

The motion is, Hon. Members, that clause 37 and schedule 1, along with clause 38 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 39.

Mr Corkish: Thank you, Madam President.

Clause 39 requires the Council of Ministers to publish a marine infrastructure consent.

If a marine infrastructure consent includes provisions made by virtue of clause 37(5)(a) or (b), or paragraphs 10 or 11 of schedule 1, the consent must be made by order. Clause 37(5)(a) allows for a marine infrastructure consent to apply, modify or exclude a statutory provision in relation to any provision that may be made within a consent. Clause 37(5)(b) allows for a marine infrastructure consent to make amendments, repeals or revocations of statutory provisions of local application in consequence of or in connection with the consent. Paragraph 10 of schedule 1 allows a marine infrastructure consent to make provision for the making of byelaws by any person and their enforcement. Paragraph 11 of schedule 1 makes provision for the creation of offences in connection with the non-payment of charges or enforcement of byelaws.

Any orders under this provision would require Tynwald approval before they come into operation.

The clause also requires the Council of Ministers to deposit in the General Registry a copy of the marine infrastructure consent, the latest version of the plans supplied by the applicant in connection with the application and the statement of reasons.

I beg to move that clause 39 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Clause 40.

Mr Corkish: Thank you, Madam President.

Clause 40 allows a marine infrastructure consent, including a change or revocation, and any decision to an application for or in connection with a marine infrastructure consent to be challenged or questioned in court only by way of petition of dolence.

I beg to move that clause 40 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Clause 41.

Mr Corkish: Thank you, Madam President.

Clause 41 allows the Council of Ministers to correct an error in marine infrastructure consent, subject to agreement by the Department of Infrastructure, the Department of Environment, Food and Agriculture, and any other prescribed person. Copies of the correction must be deposited in the General Registry.

If there is an error in a marine infrastructure consent which was made by order, it must also be corrected by order. This order would require Tynwald approval.

I beg to move that clause 41 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Clauses 42 and 43.

Mr Corkish: Thank you, Madam President, I will take clauses 42 and 43.

Clause 42 allows the Council of Ministers to make a change to a marine infrastructure consent if they are satisfied that the change is not material. The change may be made on application. A change may impose new requirements and/or remove or vary existing requirements.

This clause requires the Department of Infrastructure to make regulations about changes. The regulations may include provision about applications, publication of requests for changes, publication of changes, about consultation and conferring discretion on the Department of Infrastructure or another specified person.

Clause 43 is essentially the same as clause 42 albeit with the following differences: the clause deals with material changes and revocations; the Council of Ministers may change the consent if there is significant error in the consent; the clause allows the Council of Ministers to revoke a marine infrastructure consent.

The regulations made under the clause will be able to set out provisions relating to revocations.

The Council of Ministers may pay compensation to a person whom they consider to have been unfairly prejudiced by a change or a revocation under this clause.

Changes under clause 42 and 43 or a revocation under clause 43 are to be made by order, if the original consent had been made by order. Orders made under these clauses would require Tynwald approval before they became effective.

Both clauses requires the Council of Ministers to deposit any copy of any changes or revocations in the General Registry.

I beg to move that clauses 42 and 43 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The motion is that clauses 42 and 43 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 44.

Mr Corkish: Thank you, Madam President.

Clause 44 requires the Department to maintain a register of marine infrastructure consents. The register must also include details of corrections, changes, revocations and any other prescribed matter. The register must also include details of refusals of applications for marine infrastructure consents and details of reasons given in connection with applications for or in connection with marine infrastructure consents.

I beg to move that clause 44 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Now the mover seeks to move clauses 45, 47, 48 and 49 together, and then revert to clause 46.
Hon. Member.

Mr Corkish: Thank you, Madam President.

If I may take clauses 45, 47, 48 and 49 together, these clauses introduce a compliance regime. The onus is on the developers to comply with the consent issued. Where a developer is non-compliant with a consent, the Department will work with developers to seek compliance.

I beg to move that clauses 45, 47, 48 and 49 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The motion is that clauses 45, 47, 48 and 49 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 46.

Mr Corkish: Thank you, Madam President, for your indulgence in this.

Clause 46 requires controlled marine activities authorised by a marine infrastructure consent to be commenced before the end of a prescribed period or another period specified in the consent. The prescribed period can be set out in secondary legislation, which will be required to be laid before Tynwald and will be subject to the negative procedure. If the controlled marine activities have not commenced before the end of the period, the consent will cease to have effect.

The clause also confers powers onto the Department to make regulations specifying what is to be treated, or not to be treated, as commencement of controlled marine activities. These regulations would need to be laid before Tynwald and will be subject to the negative procedure.

I beg to move that clause 46 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Clause 50.

Mr Corkish: Thank you, Madam President.

Clause 50 allows the Department of Infrastructure to make regulations exempting specified activities or classes of activity from the requirement for marine infrastructure consent.

It is important to note that the clause also makes provision for the operation of another consenting regime in relation to the activities that would require marine infrastructure consent but for the exemption. This is to ensure the exempted activities can be consented for under a more appropriate consenting regime, if it is considered necessary.

I beg to move that clause 50 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

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

Now you wish to move clauses 51, 52 and 53 together?

Mr Corkish: Thank you, Madam President.

Clause 51 confers powers on the Department of Infrastructure to make regulations about the preparation and adoption of marine policy statements and marine plans.

Clause 52 confers powers on the Department of Infrastructure to make regulations about the exercise of functions under this Bill.

The regulation prepared under this clause would be laid before Tynwald and will subject to the negative procedure.

Clause 53 confers powers on the Department of Infrastructure to make regulations providing for the charging of fees and the recovery of costs in connection with the performance of functions under this Bill.

The regulation prepared under this clause would be laid before Tynwald and will subject to the negative procedure.

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

Mr Crookall: I beg to second, Madam President.

The President: The motion is that clauses 51, 52 and 53 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 54.

Mr Corkish: Thank you, Madam President.

Clause 54 states that a provision that could be made by a marine infrastructure consent may not be included in a permission, consent or approval under any of the consenting regimes. It should be noted this may be disapplied by regulations in specified cases or classes of case. The regulations would be laid before Tynwald and will be subject to the negative procedure.

I beg to move that clause 54 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: Lord Bishop.

The Lord Bishop: Madam President, could the mover give an example of when this might be relevant, because it seems to me that it says something may not be included – but it does not have to be included anyway, so I am just wondering what it is about.

The President: The mover to reply.

Mr Corkish: Madam President, I am perplexed by that question. If I can be helped by the officer from the Department, could I defer to him once more?

The President: Yes.

Mr Corkish: Thank you.

The President: As long as he is not perplexed by the question! *(Laughter)*

Mr Brooks: I have not actually thought about where it could be ... I think it would be on a ... What I can say is it would have to be done on a case-by-case basis, depending on what application is submitted and seeing what issues and what other consents may be needed, or not, in applying that provision as appropriate.

A Member: A catch-all.

The President: Are you any wiser, sir?

The Lord Bishop: I am none the wiser! I am sure there is a very good example which could be given, but I cannot think of one – but there we are.

Mr Brooks: I think it would be used in a very rare case, but it would need to be on a case-by-case basis.

Mr Corkish: Madam President, if we can think of one by the Third Reading, I will certainly – *(Laughter)*

The Lord Bishop: Well, I shall look forward to that! *(Laughter)*

Mr Corkish: And de-perplex us.

Mr Coleman: Lights will be burning late!

Mr Corkish: Madam President, I beg to move that clause 54 stand part of the Bill.

The President: Such faith!

Right, clause 54, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 55.

Mr Corkish: Thank you, Madam President.

Clause 55 confers powers on the Department to make regulations relating to works or proposed works which are carried out, or are proposed to be carried out, partly in the controlled marine area and partly outside it. The regulations may also provide for a provision of this Bill or another

enactment to apply, with or without modifications. The regulation may also provide for a provision of this Bill or another enactment not to apply. Therefore, a submarine cable which is to be landed onto the landward side of the mean high water mark could be dealt with under this Act and would not require subsequent consents or approval under other enactment, for example the Town and Country Planning Act 1999.

The regulations would be laid before Tynwald and will be subject to the negative procedure.

This clause also confers powers on the Department of Environment, Food and Agriculture to make regulations that make provision for the application of consenting regimes to seismic survey work which will or may affect the controlled marine area.

I beg to move that clause 55 stand part of the Bill.

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

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

Clauses 56 and 57.

Mr Corkish: Clause 56 and 57 together, Madam President, thank you.

Clause 56 sets out penalties for summary convictions for offences under section 9(2) and section 17.

Clause 57 applies where an offence under this Bill is committed by a body corporate and it is proved that the offence (a) was committed with the consent or connivance of an officer of the body, or (b) was attributable to neglect on the part of an officer of the body. It should be noted that the officer, as well as the body, would be guilty of the offence and would be liable to the same penalty as the body.

The clause also defines 'officer'.

I beg to move that clauses 56 and 57 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The motion is that clauses 56 and 57 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 58, 59 and 60.

Mr Corkish: Thank you, Madam President.

Clause 58 sets out the grounds for a defence for a person charged with an offence under section 9(2), which deals with carrying out a controlled marine activity without a marine infrastructure consent.

Clause 59 binds the Crown to the Act.

Clause 60 sets out general provisions in relation to orders or regulations made under this Bill.

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

Mr Crookall: I beg to second, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I wonder if the mover could tell me how many sets of regulations are in this Bill, because I have lost count! *(Laughter)*

My main query, actually, is relating to the very short line of clause 59:

This Act binds the Crown.

I just wondered why that is in this.

Traditionally there is the distinction between the Crown from the UK guidance as the monarch or the Crown as the political entity, namely the entity which exercises the government powers such as the executive government, the ministers, government departments, armed forces as well. The concept of the Crown embraces both elements.

Does that concept also include Isle of Man Government Departments, and is this to ensure the application of this Act applies to maybe another Government Department asking for this process, maybe to do something?

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

My only advice is that binding the Crown to the Act means that the Sovereign, the Government etc., are bound by the Act and are therefore not exempt from the provisions of the Act.

For further clarification of that, can I refer to the learned Acting Attorney General for guidance on that particular issue regarding the Isle of Man Government?

The President: Learned Acting Attorney.

The Acting Attorney General: Thank you, Madam President.

A very interesting query. What I would like to do, by wish, is to come back at the Third Reading, because I would like to look into that further myself. I have never seen such a bold statement, personally. If that might be helpful to my hon. colleagues, I would like to do that, if I may.

Thank you.

Mr Corkish: I beg to move clauses 58, 59 and 60, Madam President.

The President: I will move them separately, Hon. Members.

Clause 58: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 59: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 60: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 61.

Mr Corkish: Madam President, clause 61 –

The President: Introducing also ... Oh, no, sorry, that is on the next page. Clause 61, yes.

Mr Corkish: Thank you, Madam President.

Clause 61 confers powers on the Department of Infrastructure to make regulations in relation to the transitional provisions in connection with the commencement of this Bill.

The regulations made under this provision would require Tynwald approval.

I beg to move that clause 61 stand part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The motion is that clause 61 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 62 and schedule 2.

Mr Corkish: Thank you, Madam President. Clause 62 and schedule 2 together.

This clause provides for the coming into effect of schedule 2, which contains amendments to legislation consequential upon the coming into operation of the subsequent Act, and confers powers upon the Department to make further provision by order in the event of subsequent alteration to the list of consenting regimes mentioned in section 9.

An order made under this provision would require Tynwald approval.

I beg to move that clause 62 and schedule 2 be a part of the Bill.

Mr Crookall: I beg to second, Madam President.

The President: The motion is that clause 62 and schedule 2 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 stages of the Bill, Hon. Members.