

2. Marine Infrastructure Management Bill 2015 – Third Reading approved

Mr Corkish to move:

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

The President: We turn to the Marine Infrastructure Management Bill 2015 for Third Reading.
The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

In moving this, the Third Reading of the Bill, I wish to thank my seconder, Mr Crookall, and thank the officer from the Department of Infrastructure, Mr Ian Brooks, for his help in providing additional information to this complex Bill during its passage in this place.

The purpose of the 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 broad principles of the Bill have been widely consulted upon. As observed by my good friend and Council colleague Mr Turner, in his opinion this Bill and its perceived benefits are long overdue in introduction.

It should be noted that the proposed consenting regime is similar to, but not the same as, 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. This was particularly drawn out through questions about why the Council of Ministers are the decision makers in the process.

I can provide further clarification on the reasoning why the Council of Ministers will be the decision maker. Firstly, as highlighted by Mr Brooks in response to the Hon. Mr Turner, it should be noted the Department of Infrastructure owns the Island's territorial sea and therefore has a vested interest in any application in the marine environment. This will create a conflict of interest, as the landowner will be granting approval for development on its own land. Therefore, in the interest of transparency in the process it is considered it would not be appropriate for the Department to determine an application under this new primary legislation. It was decided that the Council of Ministers are the most appropriate body to determine such applications. There is a precedent to this approach through the terrestrial planning system. Planning applications submitted to DEFA in which they have a vested interest are determined by the Council of Ministers. This process will allow the application to be determined in an open, transparent and impartial manner, and eliminate any actual or perceived conflicts of interest.

It should be noted that in UK waters the seabed is not owned by a government department; it is owned by the Crown Estate. Therefore, the Secretary of State is not conflicted in the decision making. This would not be the case for the Minister for Infrastructure.

The Lord Bishop asked for an example of when clause 54 might be relevant, and I would like to give some clarification on this clause. Clause 54 disapplies the consenting regimes, as outlined in clause 9(5). However, the Department may reinstate one or more of the consenting regimes through regulations in specified cases or classes of case. As example of when this could be applied, we could take the case of a large substation on the landward side of the mean high water mark, the development of which is in connection with the development of an offshore renewable energy generation project. The Department may consider it more appropriate to assess the substation element of the work via a planning application under the Town and Country Planning Act 1999

rather than through the Marine Infrastructure Management Act. The Department could specify in regulations that the Town and Country Planning Act applies in those circumstances.

Madam President, before I move the Third Reading, I understand that the Acting Attorney General will be prepared to provide clarification in relation to what is meant at clause 59 – ‘This Act binds the Crown’ – which was subject of a query during the clauses stage.

Madam President, I beg to move that the Bill be read for the third time and do pass.

The President: Before I invite the learned Attorney, do we have a seconder?

Mr Crookall: I beg to second, Madam President.

The Acting Attorney General: Thank you, Madam President.

As Hon. Members are aware, and as has been explained, the purpose of the Bill is to institute a regime for the granting of consent for carrying out certain activities in the territory lying between the seaward boundary of the Isle of Man territorial sea and the mean high water mark – in other words, the area comprised in the seabed and the foreshore.

The seabed of the Isle of Man territorial sea is vested in the Department of Infrastructure by virtue of a deed of conveyance dated 3rd September 1991 between Her Majesty, the Crown Estate and the Department of Highways, Ports and Properties, which functions are now with the Department of Infrastructure and much of the foreshore is also vested in that Department.

The Department – indeed, any Department of our Government – is an emanation of the Crown. The basic assumption in law, by virtue of the doctrine of Crown immunity, is that statute does not bind the Crown unless express provision is made in statute. The doctrine of Crown immunity is not limited to the monarch personally but extends to all bodies and persons acting as servants or agents of the Crown, whether in its private or public capacity. In particular, the doctrine embraces all elements of the executive government for Ministers of the Crown downwards. Therefore, if the Crown were not bound expressly by this Bill, it would not apply to the person, namely the Department of Infrastructure, responsible for the majority of the area to which the Bill relates, rendering the new regime largely ineffective.

I hope that is of some help to Hon. Members.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I would like to thank the learned Acting Attorney General for the explanation on that because my query was with the section that says ‘binds the Crown’ relating to UK departments. My query was does that also apply to the Isle of Man and he has explained it does, so I thank him for that interesting information, which I think has been of use to Council this morning.

I am going to support the Third Reading. It is the only show in town and I have said in earlier sittings it is a shame it has taken so long to actually get to this stage.

The mover states that this is a simpler regime than the UK, which I will welcome, but the proof, of course, will be when the first application comes in. We already know that there are parties interested in the waters around the Isle of Man, so hopefully this will be the right tool for them to progress their projects.

I hope the Department keeps it under review, because although he stated it was simpler it still takes quite a bit of reading when you go through it with the various stages, because some applications are made through DOI and some are made through other bodies; so, whilst simpler, it is not simple.

I did query why there was Council of Ministers involvement and the mover did explain the difference is that the seabed is vested in the Crown Estate in the UK, which is right of course – they are not the Secretary of State for ... I forget which it was now that was dealing with this – it was not

Transport, it was one of the others. That does explain, but I think when they are looking at these regimes, to simply say, 'Well, we've got one that is very similar to planning,' – maybe they should be looking at a clean sheet approach, because personally I think the planning system itself is not the best example. We have seen, and it has been mentioned certainly in this place many times by my former colleague, Mr Lowey, that when we have the Council of Ministers doing the planning applications for picnic benches, that is not even county council stuff and quite honestly it is laughable. So they should look at the whole system, really, of how these things are dealt with when they are revising the legislation. I accept the point that we have a process in place and we will use it for the time being, so that has explained something, but again I think there are options, when you are bringing in something new, to actually start with a clean sheet of paper. I am not talking about reinventing the wheel, but actually starting with a clean sheet of paper rather than 'that's the way we've always done it.'

As I said, we were talking about this in 2007 and 2008; we are now in 2016. A couple of years ago, I drove through the Midwest of America, where there were no wind turbines, and three years later I came back and there was a stretch that ran to about 30 miles in the same area. I was talking to somebody there about that whole project and the whole thing had taken less than three years from start to finish. But here we are, almost a decade later, still talking about it. The point I am making is that the rest of the world is getting on with doing these things and we seem to wrap ourselves up time and time again in talking about ourselves instead of getting on with it.

So this is long overdue. This is the stage now where we are hopefully going to send it off and see some things moving. I hope we get some projects on the go and I hope they will have the economic benefit that we should have been already enjoying.

I wish the mover and the Department well with this and will support the Third Reading.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

I would simply like to thank the hon. mover for discovering the meaning of clause 54 for me. I am very grateful to him and I am happy to support the Bill.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Madam President, I too am supportive of the Bill and look forward to how it can streamline the process.

The Hon. Member Mr Turner has already alluded to the fact it has been a long time in gestation, this Bill, but I am sure it will not be long before the water is tested.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

Can I firstly thank the Acting Attorney General for his clarification

Mr Turner – I thank him for his support and indeed the time taken to this Bill. Yes, indeed, the plan is that it should be simpler. It is an important Bill and great care and consultation have been taken up to this point and surely will be into the future. It is a complex Bill, but again is being approached with great care. His comment regarding the system in revising the legislation of it is noted by the Department, and we would agree with him that here is action being taken, hopefully, which will reap rewards and benefits for Isle of Man plc.

I thank the Bishop for his question, which has now been answered. I thank him for his support, and indeed Mr Anderson, the former Minister of DOI, who certainly will have had involvement in this, and indeed frustrations, and will be glad to see that this is now moving forward.

Madam President, I beg to move the Third Reading of the Marine Infrastructure Management Bill 2015 and that it do pass.

The President: The motion is that this Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. The motion therefore carries.