

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

Mr Corkish to move:

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

The President: We now move to the Highways (Amendment) Bill 2015 to take the Second Reading and clauses.

I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

I move that the Highways (Amendment) Bill 2015 be read a second time.

Madam President, due to the referral of this Bill to the Committee, the First Reading debate was necessarily curtailed, so I can now, if I may, describe its principal effects in greater detail than would otherwise normally be the case.

The President: Have we got this wrong, then? Did we not conclude the First Reading?

A Member: We did conclude, Madam President.

The President: Yes, we did conclude the First Reading – I have it here.

Sorry, you did not say what you wanted to say, but we have actually voted on the First Reading. Carry on.

Mr Corkish: Understood, Madam President.

The Bill, which is promoted on behalf of the Department of Infrastructure, is a wide-ranging affair with five key themes: first, the improvement of highways or their surroundings; second, dealing, in a broad sense, with the misuse of highways; third, the conferment of certain permissive powers on local authorities with respect to highways; fourth, the creation of an advance payment code relating to the making up of private streets; and finally, the better facilitation of highway amenities. I will now, if I may, 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. The first enables it to designate improvement lines for widening them and to require, by agreement or compulsorily, any land, including premises, lying between the improvement line and the highway.

I may at this point 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 presently a material danger or a black spot 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 interests 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. May I again assure Hon. Members that this power will be used only rarely.

With regard to 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. It clarifies and amplifies the power to install on highways equipment for detection of traffic or other offences.

It empowers the Department to remove debris or objects causing an immediate danger on 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.

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

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

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

With regard to the final theme, the facilitation of highway amenities such as street cafés and kiosks, the Bill enacts new provisions, doing away with the bureaucratic duplication that exists at present. 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 disappplied.

When 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 obligating 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 recognition that there are some instances where a right of way is shown on a definitive map but the right exercisable on the ground is and always has been along a different line.

May I assure Hon. Members that the rectification procedure was never intended to be available as a means of circumventing the procedures that apply to amending a right of way.

If Council accepts the amendments to be moved by the Hon. Member, Mr Turner, they will incorporate safeguards equivalent to those for amending a right of way. So it will be made clear that the rectification procedure cannot be used to circumvent the necessary processes before an adjustment is made to a right of way or a definitive map.

In the light of the amendments to be moved, the Department is of the opinion that the provision, as amended, will fully meet, in a practical way, the concerns about rectification expressed at Second Reading in another place and in Committee here.

The third amendment, which affected clause 26, clarifies more profusely 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 is simply to clarify a situation that presently pertains.

Mr Crookall: Could you clarify that? You said ...

Mr Corkish: Sorry. Mr Crookall, not Mr Turner. I am (**A Member:** Deeply sorry!) obliged to you. Sorry, Madam President.

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 so doing 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 second time.

The President: The Hon. Member, Mr Crookall.

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

The President: Hon. Member, Mr Turner.

Actually ... Yes, we will finish the Second Reading and then we will adjourn.

Mr Turner: Thank you, Madam President. It is only a few points. Where is my list ...! (*Laughter*)

The mover talked about reducing bureaucracy, and I cannot understand why – when we are dealing with the likes of approval of gates or styles on footpaths, which are distinctively the job of the Highways Division ... At the moment we have one authority dealing with it and now we are going to send it out to 24 authorities to all have their own systems of approving these. I just find it quite bizarre that, when we are trying to centralise as many of these functions as possible to make the process simpler, people now have to go via their local authority, many of which are not geared up for some of these processes.

The same with cafés, kiosks and other such things on the highway. I would have thought that the highway authority is the right place to deal with those; they will have a common standard and make it simpler. But now to have these provisions put out to all the many local authorities, I just see as a bit pointless.

I will just say, though, Madam President, that the provision for the quarries is a sensible one. The fact that they are unable to retail stone at the moment to certain persons is a problem. I understand that was unintentionally prohibited during another Act where something had been worded slightly wrongly and there was an objection from another quarry to say they cannot sell the stone despite being able to sell it previously. I think it is important that this is done so that persons can purchase stone from the quarry they choose to go and purchase stone from.

Those are the comments at the moment. I just think that this seems to be at odds with the centralising of services, yet the DOI seem to be dishing things out, which will be a fragmented service. There will not be consistency, because there never is, and, even though they are going to issue guidance, there will be 24 different ways of interpreting it, and it will be a bit of a nonsense really.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

I thank Mr Turner for his views and indeed opinion. Firstly his latter point: the item relating to quarries. The recycling and purchasing of stone is a good move indeed, and I thank him for his understanding of that.

With regard to the reducing of red tape, it is to allow local authorities to deal with it, if the Department for any reason cannot.

Regarding cafés and kiosks on the highway, local authorities allow the Department of Infrastructure ... The enforcement proposal allows both approval and enforcement, for that to happen.

Again, as I say, the quarry: we certainly agree with it.

Reducing bureaucracy: we think it does. We have moved that local authorities take more responsibility on themselves and we think this is a move in the right direction.

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

At that point we will adjourn until 2.30, Hon. Members.

*The Court adjourned at 1.03 p.m.
and resumed its sitting at 2.30 p.m.*

Highways (Amendment) Bill 2015 – Clauses considered

The President: Fastyr mie, Hon. Members.

Members: Fastyr mie Eaghtyrane.

The President: Now, we come to the Highways (Amendment) Bill, clauses stage.

Sorry, I am just reading notes that have been presented to me – and I have to apologise, I seem to have lost the pen! (**Mr Corkish:** Not guilty!) Thank you – oh, I am inundated now! Thank you very much.

I think the Hon. Member wishes to take the clauses in some groupings, but we will start off with clauses 1 and 2.

Mr Corkish: Thank you, Madam President. Very few groupings.

Clauses 1 and 2 of the Highways (Amendment) Bill 2015 give the Bill its short title and provide that it will come into operation on one or more days appointed by the Department of Infrastructure.

Madam President, I beg to move that clauses 1 and 2 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 and 2 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 3 briefly introduces the amendments made by the rest of the clause in part 2.

Madam President, I beg to move that clause 3 do stand part of the Bill.

Mr Henderson: I beg to second, Eaghtyrane.

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

Now, Hon. Members, you will see that amendments have been printed on our Order Paper but you will also have received a hard copy this morning, which differs in a minor way from the Order Paper. I would ask you, when considering the amendments, to look at the hard copy which we have received this morning.

We come to clause 4.

Mr Corkish: Thank you, Madam President.

Clause 4 makes new provision catering for the maintenance, at the public expense, of cycle tracks in addition to cycle-paths which are already covered in the Act. The difference between a cycle track and a cycle-path is that the former is part of an all-purpose highway containing a carriageway, whereas the latter is a freestanding highway in its own right.

The clause concludes by empowering local authorities to undertake, on a purely permissive basis, the maintenance of bridal paths, cycle-paths, cycle tracks and footpaths that are maintainable by the Department of Infrastructure, but without affecting the Department of Infrastructure's duty of maintenance. Consequently, a local authority will be able to act in a case where the DOI considers it expedient to do so.

Mr Crookall is moving an amendment that makes no substantive alteration, simply corrects drafting mistakes.

Madam President, I beg to move that clause 4 do stand part of the Bill.

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crookall.

Mr Crookall: Thank you, Madam President.

This amendment makes no substantive alteration to the thrust of the provision that it replaces, being a provision that amends section 3 of the Act. Due to a drafting oversight, the original clause based its amendment on a form of section 3 that was outdated.

The replacement provision is simply re-cast to bite on the section as it presently is.

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

Amendment to clause 4

Page 9 leave out everything from the beginning of line 18 to the end of line 20 on page 10 and substitute —

'(1) Section 3 is amended as follows.

(2) In subsection (2)—

(a) for paragraph (ja) substitute —

«(ja) a bridle-path created by a public path order or an order under section 91A;»;

(b) after paragraph (k) insert —

«(ka) any cycle track or cycle-path, whether coming into existence before or after the commencement of this Act;».

(3) After subsection (4) insert —

«(4A) Without prejudice to the duty of the Department under subsection (1), a local authority may, within its area, undertake the maintenance of a bridle-path, cycle-path, cycle track or footpath that is a highway maintainable by the Department and, if it does, the Department may provide that the whole or part of the expenditure incurred by the local authority in doing so is to be defrayed by the Department.».

The President: Hon. Member, Mr Coleman

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

The President: If no-one wishes to speak, I put the amendment to you, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move now to clause 6 as printed – if I have got this marked correctly? Wait a minute, the Keys have done something ... Right, maybe I have misread that.

Okay, clause 5 then.

Mr Corkish: Thank you, Madam President.

Clause 5 as originally drafted limited itself to substituting in section 4 of the Act a new subsection (3), the purpose of which was merely to express in a better way the thrust of the subsection, namely to confer power on the DOI to require that a developer provide security under a road adoption agreement for the performance of his or her obligations under the agreement.

Mr Houghton moved in another place a departmental amendment substituting a new clause 5. The amendment of Mr Houghton's self-explanatory speaking note is set out in annex 1.

Madam President, I beg to move that clause 5 do stand part of the Bill.

The President: Right, I see now where my confusion came from: I had marked that this had been amended. It has been amended, and the amended version is printed in your Order Paper on page 11.

So that is clause 5, in the amended version. The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Corkish: Madam President, provision of an environmental nature is made, enabling the DOI 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 is made in clause 18, enabling the DOI to acquire land by agreement or compulsorily in order to mitigate the adverse effects of highways on its surroundings, but it is envisaged that this power will be used only rarely.

An example of development made involves a change of use from residential use to a landscaped amenity hidden from the highway by trees.

Madam President, I beg to move that clause 6 do stand part of the Bill.

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Corkish: Thank you.

Clause 7: the DOI is empowered to designate improvement lines for the widening of highways and by virtue of clause 18 to acquire by agreement or compulsorily any land including premises lying between an improvement line and a highway.

Again, these powers are intended to be used only sparingly, in the event that the Department of Infrastructure considers that the existing contours of a highway present a material danger, a black spot, to persons using it.

It will be an offence with a maximum fine of £50,000 to erect and retain a new building or to make a permanent excavation between an improvement line and the centre line of a highway, without the DOI's consent.

The provisions reflect virtually verbatim corresponding provisions that have been long and uncontroversially in force in Great Britain for many, many years.

Madam President, I beg to move that clause 7 do stand part of the Bill.

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

Mr Corkish: Thank you, Madam President.

The principal change made by this clause is to enable the DOI, in the interest of highway safety, to require the corners of a proposed but not an existing building to be rounded or splayed off, if it considers that the view at the corners would otherwise be obstructed.

Madam President, I beg to move that clause 8 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Corkish: Thank you, Madam President.

Clause 9: clarification and amplification is made of the power to install equipment in highways for the detection of traffic or other offences. Whereas previously the power of installation was vested in the DOI alone, it is now also exercisable by the Chief Constable.

Madam President, I beg to move that clause 9 do stand part of the Bill.

The President: Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Corkish: Madam President, clause 10: it is made an offence to erect a gate or stile across a footpath or bridle-path without lawful authority.

Madam President, I beg to move that clause 10 do stand part of the Bill.

The President: The Hon. Member.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second 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.

Clause 11.

Mr Corkish: Clause 11, thank you, Madam President.

This clause addresses the matter of debris or other objects left to cause an immediate danger at the side of or over or within a highway. The Department is empowered to remove them.

Madam President, I beg to move that clause 11 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

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

Clause 12.

Mr Corkish: Thank you, Madam President.

Clause 12: provision is made that has the effect of additionally prohibiting private owners of motor vehicles from misusing parking spaces to advertise the sale of their vehicles. At present,

section 55A, which the clause amends, applies only to the misuse of parking spaces by commercial vehicles advertised for sale.

Madam President, I beg to move that clause 12 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 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.

Clause 13 inserts four new sections.

Section 55B empowers a local authority to approve the erection of a gate or stile on a footpath or bridle-path in connection with the use of the surrounding land for agriculture or forestry purposes.

Under section 55C a duty of maintenance is placed on an owner, backed up by reserve powers being conferred on the local authority to act and recover its expenses.

Section 55D gives express authority to local authorities with the approval of the DOI to erect flagpoles, pylons or other structures for the display of decorations.

And to protect drains, sewers and the surface of highways, section 55E makes it an offence, subject to certain exceptions, to mix or deposit cement mortar, etc. on highways.

Madam President, I beg to move that clause 13 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

As I raised at the Second Reading, I do think this delegation – or what appears to be a delegation – to local authorities is a bit nonsensical really.

Surely, with some of these authorities being part time, and even having part-time clerks, these functions should be carried out by the Department, as the highway agency. Are the powers in particular 13 completely delegated to the local authority? It does say the person may with the approval of the local authority erect a gate, stile, or similar structure.

To me, it is not clear whether the Department still retains that power as well, or whether it here is completely delegating that power to the local authority. If so, would he not consider that is a bit short-sighted and really, the Department should consider dealing with these matters and then it is uniform across the Island?

We are only 30-odd miles by 12, and to have this fragmented down into all these other authorities just seems a bit ridiculous.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

I thank Mr Turner for his observations which he made earlier in the Second Reading. I did mention then about the thoughts of the Department regarding local authorities, and surely this action gives some additional power and responsibility to local authorities for their own areas.

Delegation to local authorities ... The functions should be carried out by the Department – no. Powers are not being abdicated. The Department still has a duty to deal with them. Power is given to the local authorities to deal with, if the Department of Infrastructure did not have the time or resources.

A Member: So busy!

The President: The motion is, Hon. Members, 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.

Power is taken to relegate to subordinate legislation the roadworks code, which applies to the opening up of highways by undertakers.

In this way, any desirable amendments of the code will not need to await, perhaps for several years, a suitable primary legislative vehicle becoming available, but will be able to be effected much sooner in regulations, subject to Tynwald approval.

So what will happen will be the transposing of what is presently schedule 4 to the Act, subject to fine tuning, into regulations, thereby facilitating the incorporation of any later desired amendments much more swiftly.

Madam President, I beg to move that clause 14 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I mentioned at an early Reading of this about the standards of works that are going on in the road.

I am delighted to announce, after my Question in the other place about the Glen Darragh road, it was dug up again last week, which I think must be the 13th or 14th hole that has been dug in that new road! And again, it has been put down in not the best form, so I hope that the regulations that come in will, as I have said before, ensure that standards are met and that the Department will ensure that these regulations do include the provision that when they undertake these works, the standards are to the right standard, or they have to go back and re-do it.

The example I gave was, after hundreds of thousands of pounds' worth of work by the Department, it has been dug up numerous times in a very short period. It is just not acceptable to have it put down in such a poor method. So I hope that these regulations, when they come, that this enables, will ensure that.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

I thank Mr Turner again for pointing out the importance of the Glen Darragh road, and the 13th or 14th hole. (*Interjections*) He has made these observations before. In the Chamber today is the

Director of Highways and members of the Department. I am sure they have taken on board and will do their utmost to keep the fabric of the road – the Glen Darragh road and others – in the very best condition.

Madam President, I beg to move.

Mr Turner: It is the standards of putting it back! (*Interjections*)

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: Clause 15, thank you, Madam President.

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

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

Madam President, I beg to move that clause 15 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

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

Madam President, I beg to move that clause 16 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

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: Thank you, Madam President.

This clause substitutes a new section 78, which now contains supplementary provision with respect to the provision of highway amenities such as cafés, kiosks etc. Where they are proposed for a trial period of no more than four weeks, the period in which responses may be made to the public advertisement of the proposal is now reduced from 28 to seven days.

The law is clarified expressly authorising a local authority to charge rent for an amenity located on a highway of which it is the owner of the subsoil. Where a licence authorising an amenity is issued, legislative duplication is avoided by removing the need to obtain other consents for matters authorised by the licence. At the request of the DOI's Planning Division the power to authorise an amenity is now devolved entirely on local authorities, given that they exercise certain planning functions.

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

Madam President, I beg to move that clause 17 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

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: Thank you, Madam President.

In addition to the circumstances described in paragraphs 7 and 9 that I mentioned earlier, DOI is empowered to acquire by agreement any land blighted by highway works.

Madam President, I beg to move that clause 18 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second 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.

Clause 19.

Mr Corkish: Clause 19, thank you.

A new provision is made extending from footpaths to footways DOI's power by order to convert them into cycle tracks or bridle paths. Schedule 2 to the Road Traffic Regulation Act 1985 is applied as to the procedure for making such orders.

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

Madam President, I beg to move that clause 19 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 19 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

Mr Corkish: Thank you, Madam President.

Clause 20: this clause is the subject of the Committee report and, as already stated, I will be supporting the amendments in the name of Mr Tuner and Mr Crookall.

Madam President, I beg to move that clause 20 be part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crookall.

Mr Crookall: Thank you, Madam President.

This amendment simply substitutes the correct spelling of certain highways referred to in section 92B(1).

I beg to move the amendment standing in my name:

Amendment to clause 20

In the amendment made by the Keys to that clause, in the inserted section 92B(1) —

(a) for “foot path” substitute «footpath»;

(b) for “bridle path” substitute «bridle-path»; and

*(c) for “cycle way” substitute «cycle-path»,
wherever occurring.*

Mr Coleman: I beg to second, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

As Members know from this morning, this amendment has come out of the Committee’s report, which the mover, Mr Corkish, was a member of. So it will be brief – I will not take up much time in recapping all the matters. What they will do is apply to rectification of rights –

The President: Can I be clear which part you are now moving?

Mr Turner: This is the ...

The President: You are moving the new clause?

Mr Turner: Yes, to do with –

The President: We have not yet finished amending the old clause.

Mr Turner: I thought it was clause 20.

The President: Yes it is, but you have amendments to clause 20 as printed, as I read it.

Mr Coleman: Section 30. *(Interjection by Mr Turner)* It is a new section 30, now.

Mr Turner: Is it?

The President: It seems, Hon. Members, that our movers and our seconders and our proposers of amendments need to get together to clarify who is doing what.

Mr Turner: I thought it was straightforward. *(Interjection by Mr Coleman)*

The President: We have in your name three amendments ... sorry, amendment numbers 3, 4, 5 and 6. Number 6 is the new clause. Are you speaking to all of them together?

Mr Turner: I was hoping to.

The President: Right. Carry on.

Mr Turner: I will just re-cap where I was up to.

I will start then by ... Hon. Members have the amendments to clause 20, first of all, which are listed on the sheet we were provided with this morning, as long as Hon. Members are clear which sheet I am referring to. I will just move that first ... or shall I do it all in one go, including the new clause?

The President: It is entirely up to you. You have tabled them together, they can be moved together.

Mr Turner: Okay, so what we are moving here is: it will apply to the rectification of the rights of way. The same procedure is applied to the diversion of rights of way in general. In short, the same procedure for both publicising a draft order and notifying interested parties of it will obtain ... provision is made for displaying notices as near as possible on the site. It is the same statutory procedure for considering objections that will have effect. An order, if made, will be subject to Tynwald approval, which is listed in the amendment sheet that Members have.

There are a few blank looking faces, Madam President –

The President: Perhaps if I can help with some guidance.

Clause 20, as printed, has been redefined by the Keys and the wording of clause 20 is now as set out in our Order Paper, from page 12 on to page 15 or so – page 16, right.

So the amendments now being dealt with by Mr Turner are amending that clause as set out in our Order Paper, not on the Green Bill. So are we clear that the amendment number 3 deals with section 92A as printed on page 14 of your Order Paper? Okay.

The second one is on the same page, amendment number 4, right? And at the end of it on page 15, amendment number 5, as printed on this sheet you have been given today, introduces a new element on page 15 before 92B.

I think we are all clear.

Mr Turner: Okay. I beg to move the amendments in my name:

Amendments to clause 20

In the inserted section 92A(2) after “relevant event,” insert “by order”.

In the inserted section 92A(3) —

(a) for “any amendment to” substitute “any order amending”; and

(b) for everything following “the Department must” substitute “take the steps specified in Schedule 3, subject to subsection (4)”.

At the end of the inserted section 92A add —

“(6) An order under subsection (2) must not come into operation unless approved by Tynwald.”.

New clause

On page 37, after line 39 insert —

“30 Schedule 3 amended – orders stopping up and diverting highways and public paths etc and amending definitive maps

(1) Schedule 3 is amended as follows.

(2) For the heading to the Schedule substitute —

«ORDERS STOPPING UP AND DIVERTING HIGHWAYS AND PUBLIC PATHS, ETC., AND AMENDING DEFINITIVE MAPS».

(3) In Part 1 of the Schedule—

(a) in the Table at the end of paragraph 2 add the following entry —

«4. Any order authorising the amendment or rectification of a definitive map.

(a) Any local authority in whose district any land affected by the amendment or rectification is situated.

(b) Any statutory undertakers having apparatus under, in, upon or over any land affected by the amendment or rectification.

(c) The owner, lessee and occupier of any land affected by the amendment or rectification.»;

(b) after paragraph 3 insert —

«3A. Where the proposed order provides for the amendment or rectification of a right of way on a definitive map, the Department shall, not later than the date on which the notice under paragraph 2 is published or first published, cause a copy of it to be displayed in a prominent position as near as possible to the ends of so much of the right of way as is the subject of the amendment or rectification.»;

(c) in paragraph 4 for “2 or 3” substitute «2, 3 or 3A»;

(d) in paragraph 8 after “public path order,” insert «or an order amending or rectifying a definitive map in respect of a right of way,»; and

(e) in paragraph 10(2) after paragraph (c) insert —

«(d) a definitive map and statement is amended or rectified in respect of a right of way in pursuance of the order;».”.

The President: Do we have a seconder for those amendments? Mr Crookall.

Mr Crookall: I beg to second, Madam President.

The President: Right, we have the amendments before us. Does anybody wish to speak to the clause, the amendments or the new clause ...?

In that case, I will first of all put the amendments to you, Hon. Members. The first one is the amendment in the name of Mr Crookall, numbered 2 on the sheet you have been circulated today; it is minor changes to foot path, bridle path and cycle ways. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now I will put to you the amendments in the name of Mr Turner. Those in favour of amendments 3, 4, 5 and 6, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We now can take clauses 21, 22 and 23 together, thank you.

Mr Corkish: Thank you, Madam President.

And can I thank you for your guidance and clarity in the former.

The President: I am not sure it was clarity in the end, but ... !

Mr Corkish: A lot more to some of us.

The President: I had plotted it through!

Mr Corkish: Thank you.

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

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

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

Madam President, I beg to move that clauses 21, 22 and 23 be adopted part of this Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clauses 21, 22 and 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 24 and 25.

Mr Corkish: Thank you, Madam President.

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

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

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

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

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

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

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

Madam President, I beg to move that clauses 24 and 25 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clauses 24 and 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 26.

Mr Corkish: Madam President, clause 26: for the avoidance of doubt, this clause amends section 106A by expressly providing that the Department may continue to dispose, by retail sale or otherwise, of any minerals worked or got by it or arising as part of its ancillary activities. As those ancillary activities are not necessarily for the purpose of any of the functions of the Department, but are rather in connection with them, a departmental amendment to that effect was carried in another place.

Madam President, I beg to move that clause 26 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Can I just place on record, Madam President, I welcome this clause, having been around in the Department at the time when this dispute appeared. It did leave quite a lot of dissatisfaction with customers of the quarry. Some of the smaller customers, in particular, who wished to purchase the type of stone that the Department quarry ... that was not really available elsewhere and it was creating, effectively, almost monopolies in the private sector, so I think it is important that this is there.

Can the Member just confirm – he did say it puts beyond doubt – again that there will still be the ability for privateers to go and purchase quantities of stone, gravel etc. from the Department's quarries?

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.
I thank Mr Turner for his understanding and acknowledgment of what this clause brings, and also eager to confirm that privateers can carry on as before. This clause will have no effect on that.
Madam President, I beg to move.

The President: The motion is that clause 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 27.

Mr Corkish: Thank you, Madam President.
Clause 27 makes new provision by prescribing fines for offences under clauses 7 and 14.
I beg to move that clause 27 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 27 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
28.

Mr Corkish: Madam President, clause 28: the definition of ‘statutory undertaker’ is redefined so as to extend to operators of sewerage and sewage systems.
An amendment was carried in another place substituting two definitions.
Madam President, I beg to move that clause 28 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

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

Mr Corkish: Thank you, Madam President.
Clause 29: consequent upon clause 7, this clause begins by prescribing the procedure to be followed before designation of an improvement line – for example, as to consultation and consideration of objections. It then prescribes what must be done on designation before setting out the action to be taken on revocation of an improvement line or part of it.
Madam President, I beg to move that clause 29 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clause 29 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Now, we have the introduction of a new clause and we will deal with that now. (*Interjection by the Clerk*) Sorry, we did deal with it in your other amendments. Right, I am sorry.
We come then to clauses 30, 31 and 32.

Mr Corkish: Thank you, Madam President.
Clauses 30 to 32: clauses 30 and 31 amend schedule 4, the road works code. The reference in the schedule to what constitutes reinstatement or making good is amended so as to enable DOI to impose other requirements on undertakers in any given case, preponderantly when it considers that lesser requirements will suffice.
Provision is also made for the giving of directions by DOI as to the timing of undertakers’ works and for the issue of DOI of a code of practice.
Consequent upon clause 14, clause 32 provides for the eventual repeal of schedule 4.
Madam President, I beg to move that clauses 30, 31 and 32 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The motion is that clauses 30, 31 and 32 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 33.

Mr Corkish: Thank you, Madam President.

Clause 33: consequent upon clause 16, this clause modifies the procedural provisions of schedule 5 so that may apply where DOI notifies an owner or occupier of land adjoining a highway that it proposes to execute works improving the access from the highway to the land. What schedule 5 as modified will do is enable the person to appeal within 28 days to the High Bailiff for the quashing or otherwise of the notice on certain prescribed grounds.

Madam President, I beg to move that clause 33 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

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

Mr Corkish: Thank you, Madam President.

Clause 34: the Highway Act 1927, which is redundant, is repealed.
I beg to move that clause 34 do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

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

Highways (Amendment) Bill 2015 – Standing Order 4.3(2) suspended to take Third Reading

The President: Now, I understand that you wish to suspend Standing Orders?

Mr Corkish: Please, if I may.

I beg to move, Madam President, that Standing Order 4.3(2) be suspended so that the Third Reading may now take place – and subject to that, be read for a third time.

The President: Is it seconded?

The Lord Bishop: Seconded.

The President: The Lord Bishop has seconded.
Is it agreed, Hon. Members? No? We will take a vote on it, then.

Mr Corkish: Sorry, Madam President, can I just ask, was I not mistaken that Mr Turner was in agreement with this being read a third time, in relation to the Bill being held up by virtue of it going to Committee?

The President: He is obviously not, today. If he wants to –

Mr Turner: I do not think so.

Mr Cretney: That was yesterday!

Mr Crookall: That was this morning!

Mr Corkish: If I am mistaken, I am mistaken – sorry.

Mr Turner: I do not remember saying that.

The President: Right, we will take a vote on it.

Voting resulted as follows:

FOR

Mr Anderson
Mr Coleman
Mr Corkish
Mr Cretney
Mr Crookall
Mr Henderson
The Lord Bishop
Mr Wild

AGAINST

Mr Turner

The Clerk: With 8 in favour, 1 against.

The President: In that case, Hon. Members, we shall proceed.

**Highways (Amendment) Bill 2015 –
Third Reading approved**

Mr Corkish: Thank you, Madam President, and apologies to Mr Turner, if I misunderstood or misheard. (*Interjection*)

Madam President, I wish to thank Hon. Members for the support that they have given to this Bill during its Second Reading and at the clauses stage.

If I may summarise the key purposes of the Bill, they are fivefold: first, the improvement of highways or their surroundings; second, the dealing, in a broad sense, of 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.

As Hon. Members may agree we have had today a full and wide-ranging debate on the Second Reading and the clauses stage, so wide-ranging and so fresh in our minds that it would be tiresome to me and for the Council to reiterate my responses to queries raised.

Madam President, I beg to move that the Highways (Amendment) Bill 2015 be read a third time and be sent to another place. *(Laughter)*

The President: Do we have a seconder?

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

A Member: A better place. *(Interjection by Mr Corkish)*

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

There is a lot in this Bill which I support; and there are a few things that I am very sceptical about, given the Department's track record, and its forerunners, DHPP and DoT.

I would like to just comment briefly. One of the provisions in here is prevention of obstructions and rounding off corners and things with new builds. The Member made much play on the fact that this would not be affecting existing buildings, but I noticed – and it was remiss of me, we had whizzed past it and I was going to mention it. He made much play about this being as I said, new builds, not existing; but then there is a clause in here which says:

The Department may serve a notice, together with a plan showing the land to which the notice relates –
(a) on the occupier of the land, requiring him or her to alter or remove a wall, other than a wall forming part of the structure of a permanent building, a bank, a fence, a hoarding ...

And off it goes. It kind of implies that might be an existing wall or structure, not forming part of the building.

So, as this was in the section where the mover made great play of saying it is to do with the *future*, can he assure us this is not some sort of backdoor method of the Department using these provisions to now start getting people to demolish walls and things that they have already got? I think it is important that if we are bringing these provisions in, there is no underlying hidden gems in here, or that the Department will then wheel round and go, 'Well of course you have passed the legislation'. At the Reading stage we were told that this was to do with things that have not yet been built.

As we have discussed in detail today, there are some quite good, sensible provisions in here. At this Third Reading, I think to delegate some of these powers out to numerous local authorities is a backward step. I think we are just giving things out for the sake of it.

One of the Members is shaking his head, and it might be alright for the bigger authorities but some of them are tiny, and are only a couple of miles wide, and here we are giving powers out that they may not be able to exercise in a timely manner.

I think the Department should have the resources to deal with these sorts of things particularly if it is to do with quite simple applications of putting gates on paths – that should not be overly burdensome on the Department. *(Interjection)* I think that is something they need to look at particularly to see how it works and to see whether local authorities are capable of exercising those functions in a timely manner.

I will support the Third Reading; I do not recall saying I would agree to suspend Standing Orders, it has to be exceptional for that. We have made quite a few amendments today and even we managed to get ourselves in a bit of a knot over it earlier on, and I think that we should have –

A Member: Speak for yourself!

Mr Turner: Well, most of us did, some of us found it quite straightforward. (**Mr Cretney:** Hear, hear.) I think we should have maybe done the Third Reading at the next sitting – but I will not oppose the Third Reading and we will hopefully then send it on its way to the other place for their consideration of our amendments.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

I again thank Mr Turner for his opinions – they are opinions that I respect. Again, I apologise if I misread his views on the Third Reading taking place today.

Going back to the rounding of corners on *new* buildings: I did add that it would be a very rare occasion for an existing building that that would happen, and it is incumbent upon the Department of Infrastructure that road safety is paramount.

If I can illuminate further, rounding off the splay of new buildings, there are two different issues: one is new buildings; two ... (*Interjection*) Yes, sorry I cannot read everything that has been provided to me, but I am just going back to what I have already said. There is no hidden agenda, and I went on to say it is incumbent upon the Department to improve, where possible, road safety for road users and indeed for pedestrians and non-road users as well. The Department as usual is happy to discuss further if any more clarification is needed by Mr Turner.

Back to the local authorities, we have already amplified this too, I think. It gives the powers to the local authorities but the Department retains the responsibility which I think we explained earlier this morning; and it is to help speed up certain times when perhaps the Department has not got the resources to do it, Madam President.

The President: The motion is that the 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, and it will be returned to the other place, with the suitable renumbering of clauses and so on.

A Member: Oh, yes we can do that.