



## **HIGHWAYS (AMENDMENT) BILL 2015**

### **EXPLANATORY NOTES**

*These Notes have been produced for the assistance of Members  
with the approval of the Member in charge of the Bill,  
the Hon Phil Gawne MHK*

#### **INTRODUCTION**

1. These Explanatory Notes relate to the Highways (Amendment) Bill 2015. They have been prepared by the Department of Infrastructure ("DoI") in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. *Ipsa facto*, where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### **BACKGROUND**

3. The Bill, which has been subject to public consultation, has elicited remarkably few responses, the only material objections being expressed by certain local authorities to the proposed non-application of planning approval for highway works (now omitted), the conferment of lighting powers on DoI (now omitted), and the conferment of a purely permissive power on local authorities to maintain at their discretion certain minor public paths (see para 8 below).
4. In the opinion of the Member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

#### **FINANCIAL IMPLICATIONS**

5. For the most part the provisions of the Bill are cost-neutral, being either self-financing or being administered by existing personnel as part of their ongoing responsibilities with no corresponding increase in budgetary provision. However, 4 clauses dealing with —

- the improvement of highway surroundings,
- the designation of highway improvement lines,
- the rounding or splaying off of corners of certain proposed buildings, and
- extended powers to acquire land or premises,

do carry with them the prospect of additional expenditure by DoI, but such expenditure is not at present quantifiable as it will depend on largely unforeseeable circumstances arising in the future.

## **SUMMARY AND STRUCTURE OF THE BILL**

6. As described below, the Bill is in 3 Parts consisting of amendments to the law on highways.

### **PART 1 – INTRODUCTORY PROVISIONS**

7. This Part gives the Bill its short title and provides for it to come into operation on one or more days appointed by DoI.

### **PART 2 – AMENDMENTS TO THE HIGHWAYS ACT 1986**

#### ***Clause 4***

8. This clause corrects or clarifies certain minor matters in uncontroversial ways before empowering local authorities to undertake on a purely permissive basis the maintenance of bridle-paths, cycle-paths, cycle tracks or footpaths that are maintainable by DoI, but without affecting DoI's duty of maintenance. *Ipsa facto* a local authority will be able to act in a case where DoI considers it inexpedient to do so.

#### ***Clauses 6 and 18***

9. Provision of an environmental nature is made enabling 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 enables it to acquire land by agreement or compulsorily in order to mitigate the adverse effects of a highway on its surroundings, but it is envisaged that this power will be used only rarely.

#### ***Clauses 7, 18, 27 and 29***

10. As has long been the case in the UK, DoI is empowered to designate improvement lines for the widening of highways and 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 DoI considers that the existing contours of a highway present a material danger — a blackspot — 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 DoI's consent.

#### ***Clause 8***

11. In the interests of highway safety DoI is empowered to require the corners of a proposed building to be rounded or splayed off if it considers that the view at the corners would otherwise be obstructed. Otherwise this clause basically re-enacts existing provisions.

### **Clause 9**

12. 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 DoI alone, it is now also exercisable by the Chief Constable.

### **Clause 10**

13. It is made an offence to erect a gate or stile across a footpath or bridle-path without lawful authority (see also para 16 below).

### **Clause 11**

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

### **Clause 12**

15. 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.

### **Clause 13**

16. A local authority is empowered 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 agricultural or forestry purposes. A duty of maintenance is placed on an owner backed up by reserve powers being conferred on a local authority to act and recover its expenses (see also para 13 above).

17. Express authority is given to local authorities, with the approval of DoI, to erect flagpoles, pylons or other structures for the display of decorations.

18. To protect drains, sewers and the surface of highways it is made an offence, subject to certain exceptions, to mix or deposit cement, mortar etc on highways.

### **Clauses 14 and 27**

19. Power is taken to relegate to subordinate legislation the road works 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. The regulations, *inter alia*, are empowered to prescribe that contravention of any prescribed provision is an offence punishable on conviction by a fine of such amount (not exceeding £50,000) as the regulations prescribe.

### **Clause 15**

20. Consequent upon the repeal of the Highway Act 1927 by Part 3, provision is re-enacted enabling DoI to make regulations for preventing the commission of nuisances on highways and the distribution of handbills, etc.

### ***Clauses 16 and 33***

21. DoI is empowered to improve access to any land from a highway in the event that it considers additional works to be needed. 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.

### ***Clause 17***

22. This clause re-enacts with material modifications existing provisions relating to the provision of highway amenities (street cafés, kiosks, etc). Where an amenity is proposed for a trial period of no more than 4 weeks, the period in which responses may be made to the public advertisement of the proposal is reduced from 28 to 7 days. The law is clarified by expressly authorising a local authority to charge rent for an amenity located on a highway of which it is the owner of the subsoil. Where a licence authorising an amenity is issued, legislative duplication is avoided by removing the need to obtain other consents for matters authorised by the licence. Given that local authorities exercise certain planning functions, the power to authorise an amenity is now devolved entirely on them.

### ***Clause 18***

23. In addition to the circumstances described in paras 9 and 10 above DoI is empowered to acquire by agreement any land blighted by highway works.

### ***Clause 19***

24. 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 (commonly called pavements) are ways for the use of pedestrians that adjoin the carriageways of all-purpose highways, of which they part.

### ***Clause 24***

25. Provision is made for an advance payments code whereby the owner of a proposed building fronting on to a private street must fund in advance the cost to DoI of its making up to its satisfaction the part of the street abutting that frontage — the power of making up being exercisable by DoI under the existing private street works code, the provisions of which are clarified by clauses 22 and 23.

### ***Clause 26***

26. DoI's powers are clarified with respect to the disposal of minerals.

### ***Clause 28***

27. The definition of "statutory undertaker" is redefined so as to extend to operators of sewerage and sewage systems.

***Clauses 30 to 32***

28. The existing road works code, which will in due course be repealed and replaced by a code prescribed by regulations (see para 19 above), is amended by enabling DoI, firstly, to relax the extent of road works in any given case, secondly to give directions to undertakers as to the timing of road works, and thirdly to issue or approve for their guidance a code of practice as to the carrying out of such works, including the arrangements to be made for the control of traffic.

**PART 3 — REPEAL**

29. The Highway Act 1927, which is made redundant by the Bill, is repealed.

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