



**SELECT COMMITTEE  
OF THE  
LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

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Y CHOONCEIL SLATTYSSAGH  
RECORTYS OIKOIL**

**PROCEEDINGS  
DAALTYN**

**HIGHWAYS (AMENDMENT) BILL 2015**

**HANSARD**

**Douglas, Tuesday, 9th February 2016**

**PP2016/0032**

**HAB, No. 2**

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**Members Present:**

*Chairman:* Mr J R Turner MLC  
Mr M R Coleman MLC  
Mr C G Corkish MBE MLC

*Apologies:* Mr T P Wild MLC

*Clerk:*

Mr J D C King

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## Select Committee of the Legislative Council on the Highways (Amendment) Bill 2015

*The Committee sat in public at 2.30 p.m.  
in the Legislative Council Chamber,  
Legislative Buildings, Douglas*

[MR TURNER *in the Chair*]

### Procedural

**The Chairman (Mr Turner):** Good afternoon ladies and gentlemen. Welcome to the public meeting of the Select Committee of the Legislative Council on the Highways (Amendment) Bill. I am Juan Turner MLC, I am chairing the Committee. With me are my colleagues, Mr Michael Coleman MLC and Mr Geoff Corkish MBE MLC and the fourth Member of the Committee is Mr Wild who has leave of absence.

The formalities of the hearing; we would ask that mobile phones are switched off or on silent so that we do not have any interruptions. And, for the purposes of *Hansard* if we could make sure that we do not have two people speaking at once so that the live stream and the recordings are clear.

The Highways (Amendment) Bill was introduced into the House of Keys on 23rd June 2015, where it was moved by the Minister for Infrastructure, Mr Gawne. It passed its Second Reading on 30th June 2015. The clauses stage in the Keys took place on 10th November and 24th November. During the clauses stage the House of Keys agreed to a series of amendments which had been moved by Mr Houghton, it was Mr Houghton wasn't it? (**Mr Corkish:** Yes.) On behalf of the Department of Infrastructure. The Bill passed its Third Reading in the Keys on 1st December.

On 3rd December the Bill appeared on the Legislative Council Order Paper for the sitting of Tuesday, 8th December. At half past one in the morning on the Tuesday Mr Hamish Killip sent an email to Members of the Legislative Council. When the First Reading was debated, reference was made to that email. The First Reading was carried but Mr Coleman then moved for the Bill to be sent to a committee. This Committee is the result of that motion.

We heard evidence on 21st January from Mr Killip and today we hear from the Department of Infrastructure and also the Attorney Generals Chambers.

That is the introduction, so welcome.

### EVIDENCE OF

**Mr B Corlett, Highways Asset Manager,**

**Mr J Robinson, Highway Services Director and**

**Ms A Goldsmith, Public Rights of Way Officer, Department of Infrastructure;**

**Mr H Connell, Attorney General's Chambers**

**Q32. The Chairman:** For the record, first of all if each of you could state your full name and your position in the relevant Departments.

30 **Mr Corlett:** My full name is William Douglas Corlett, I work for the Department of Infrastructure in the Highways Services Division. I am the Highways Asset Manager. I have regard with public rights of way and regulation of them come under my section.

**Mr Robinson:** My name is Jeffery Frederick Robinson, I am the Highway Services Director in the Department of Infrastructure overseeing the highways and structures for the Department.

35 **Mr Connell:** And I am William Howard Connell, one of the legislative drafters in the Attorney General's Chambers and *not*, please note, the drafter of the Bill.

**The Chairman:** Thank you.

40 **Ms Goldsmith:** My name is Anna Goldsmith, I am the Public Rights of Way Officer for the Department of Infrastructure.

**Q33. The Chairman:** Thank you very much.

45 To get things started this afternoon would you like to make an opening statement? Obviously you have had the opportunity to no doubt read the *Hansards* from the House of Keys debates, also the Legislative Council debates and also I would hope you have had time to read and review the information from the evidence we took here in public session from Mr Killip.

50 So is there anything you would like to say as an opening statement to the Committee this afternoon?

**Mr Robinson:** Yes sir, if I may.

55 With regard to the legislative matters we have written to the Committee answering several questions as laid out by the Committee. That letter came under the cover of Mr Howard Connell, I think that ably sets out why the Department believes these legislative changes are required and answers Mr Killip's queries on these matters.

60 I would like to draw the Committee's attention to one unintentional misdirection in that letter. Under question 13 we have implied that highways cannot be extinguished at all, which is clearly wrong. Under section 33 highways can be extinguished with the approval of Tynwald and nothing in the legislation that is being proposed will diminish the right of Tynwald in that respect.

65 With regards to failures to update the definitive map I would not seek to deny the Department has failed in this regard and I would not seek to explain that failure. Clearly, we have not been updating the definitive maps in the way that we should have. I would also not seek to disagree with any of the items listed by Mr Killip as a matter of fact. We might, however, disagree with him as to the resolution and the solutions regarding those different issues. But as a matter of fact we have no objection to the items that he has listed, and indeed we may well have other items ourselves contained within the letter that we sent to you.

70 I cannot explain to you why in the past these issues were not given priority but I can assure the Committee that these matters will be dealt with now and any new matters of which there are almost certain to be some that come to light we will deal with them as quickly as possible.

Thank you.

**Q34. The Chairman:** Okay, thank you, Mr Robinson.

75 One of the questions that we are unclear about is that we do not feel it really answers the question of what you can do under the clause; I am referring to the amendment now, the clause 20. The question of what you can do under this that you could not actually do before, if that could be clarified?

80 **Mr Connell:** The reason for the rather more extensive draft is because over the course of the summer between July and about the start of October, Clive Borrowman, who is the draftsman of the Bill, and I were in email exchange about the deficiencies of the 1986 Act. I will not go into all of the detail for that, but that led us to the conclusion that we had to actually deal with the provisions in section 92 in a more thorough way than Clive felt he was able to do. He is a contract draftsman, so because of that he felt he had to stick strictly to his brief and could not go on a more wide-ranging exploration of tidying up what he recognised – because I have got the emails with me – what he recognised as a complete mess in drafting terms, pure drafting terms.

85 It was on that basis that I looked at his provision and thought, yes, you describe it as a sticking plaster, that is what it is, but unfortunately it does not deal with the underlying boil. Because of that I thought it necessary to actually do a route and branch replacement. That is the context, sir, for the question that you ask and why I have done this rather violent change to the structure.

90 What does it achieve that could not be achieved before? The answer is rather sort of technical. The best way to explain it is that there is a difficulty with arguing about stopping up a highway which has in reality never existed. The reason why I say that is because, and Anna will give you detail if you want it, there are instances of rights of way marked on the definitive maps which do not, and moreover never have existed. One I am told, Anna can correct me if I am wrong; one apparently goes straight down the face of a cliff. It could not be exercised, it is simply wrong. And there are notes from the surveyors constructing the definitive maps which say, 'Couldn't find the map as marked, walked the one that everybody else appears to have walked.' But they recorded on the definitive maps the route as shown on their original survey maps. Because of that it is difficult to argue that you are diverting a route which has never actually existed at all.

95 So that is why I introduced the concept of rectification, because that is what it is. It is actually changing the map to what it should *always* have shown and would have shown *if* the surveyors had actually marked on the map the routes that they had walked. Now I do not know if there are that many of these instances, but that is one of the areas where I thought it was really necessary to actually deal with the point properly.

100 I am sorry it is such a long winded way of doing it, but that is the context.

110 **Q35. The Chairman:** If I may just press on that question, though. I understand what you are saying about it has never been there, and we can all agree it has never been there. But isn't the law written such that the definitive map is the gospel effectively, and surely the right way to change that – because the example we were given was to the outside world it might seem that it is only a footpath and what does it matter, but of course it has lots of ramifications for potential landowners (**Mr Connell:** Absolutely.) and purchasing and all sorts of things, so it is far more than just a footpath. If they go to the Registry and look at a definitive map that is the law and that is the end of the matter – not what we all know is really happening. So isn't the correct process, regardless of it not being there, the correct process should be to extinguish what is there on the map in the Registry and put a new document through, a new order through reflecting it.

115 **Mr Connell:** That would be possible but it obviously involves double handling. There is an argument that one could have that extinguishing something which has never actually existed is a case of attempting the impossible. In law it is not impossible, but in practice in some of these cases the right has simply never been as shown on the map. I mean it is the conundrum when is a definitive map not really definitive?

120 **Q36. The Chairman:** But are you not extinguishing the map, is that not what you are doing?

130 **Mr Connell:** I think that would be what you were doing, but would the man in the street actually understand that? I think not.

**Q37. Mr Corkish:** Mr Chairman, is the phrase we hear, 'correcting human error'?

135 **Mr Connell:** I do not even know that it is human error, I think –

**Q38. Mr Corkish:** Is this the fact you are referring to when you say that on the original survey maps the actual route never existed, how did it appear there?

140 **Mr Connell:** Can I pass that over to Anna, because I think she can answer it better than I can.

**Ms Goldsmith:** Yes, there are errors where there are routes that appear to have never existed. The original surveyors documents suggest, as Howard said, that the people who walked the path at the time actually took a different route, so you have to put it down to human error that these routes never existed but were still put on to the definitive map regardless.

**Mr Connell:** And that is why I thought rectification, which is what you would do with a document that was actually wrong *ab initio* was a better way of describing it than diverting something. I thought it was simply more transparently honest as to what had happened.

150

**Q39. The Chairman:** But in effect you could still achieve the end goal by what is there now.

**Mr Connell:** You could achieve some of it without talking about rectification, but the reality is that in a number of these cases the rights as shown on the maps have never existed and it is an attempt to deal with the problem that a definitive map is supposed to be exactly that. It is supposed to be the gospel. Well as we know scribal errors occur in the gospels and occasionally somebody has to say, 'Actually, this is what it says but it cannot possibly have meant that,' and that actually is the situation we have got with the maps.

160 **Q40. The Chairman:** Are we not in danger though of possibly causing a conflict with land where ... I use the word rights, they may not be rights of course it may just be that people are doing it. What we are basically saying is practice is now going to override what is in effect a right.

165 **Mr Connell:** No. There is a formal process which would have to be gone through before the change too effect and all of the same safeguards would apply in relation to rectification as would apply in relation to the diversion or amendment of a map.

170 **Q41. The Chairman:** This might be a question for the Department, how many cases are you aware of at the moment where you would like to use the rectification process if it was available to you today?

**Ms Goldsmith:** I would say there are three that I can think of to mind. There is one that we are dealing with at the moment where we are going through what is an extinguishment of, as Howard said, something that just does not exist. There are three that I can think of, that come to mind.

180 **Q42. The Chairman:** And are these working side by side with, for example, ones that have not yet been actioned in the Registry or they were not to our knowledge. For example, the likes of the runway extension where there was an order put through to extinguish the old footpath which is now running through the main runway at the Airport to the new path, that order went

through but that has not been reflected. Is that work running alongside of updating with the ones that should have already been done?

185 **Ms Goldsmith:** That has now been updated.

**The Chairman:** That has now been updated, thank you.  
Mr Coleman.

190 **Q43. Mr Coleman:** Is there an exercise going on to verify the definitive maps?

**Ms Goldsmith:** Yes, there is. We are going through a complete and thorough check.

**Q44. Mr Coleman:** And how long has that been going on?

195

**Ms Goldsmith:** Since probably around September last year. We have been looking at where there are errors between what is on the ground and in the map. There are also areas we need to double check whether or not there are Tynwald orders against what is marked in the definitive as a diversion going back to the 1980s. So there are different types of areas that we are looking into, not just restricted to the extinguishments.

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**Q45. Mr Coleman:** And when you have found errors how have you remedied them?

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**Ms Goldsmith:** There would either have to be an extinguishment, a diversion, all of which would go to Tynwald for approval prior to making any amendment to the definitive map. And ultimately we want to bring the map up to date with what is on the ground at the moment and what everybody agrees is a right of way.

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**Q46. Mr Coleman:** So in fact you have been managing within the existing legislation to put the maps right?

**Ms Goldsmith:** No.

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**Mr Corlett:** If I may. At the moment we are only logging. We are going through looking for mistakes but we have not actually rectified the maps as such in any of them yet.

**Q47. Mr Coleman:** Okay, and how far through are you? (**Ms Goldsmith:** Sorry?) How far through are you?

220

**Ms Goldsmith:** We have checked it against where the definitive map is maybe marked as diverted or does not be seen to exist. We have to do further checks now to see where there are errors between what is on the ground and what is in the map. So that will take a few months, at least.

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**Q48. Mr Coleman:** When do you think it will be finished?

**Ms Goldsmith:** I cannot put a date on that I am afraid, Bill?

**Q49. Mr Coleman:** By the end of 2016?

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**Mr Corlett:** Could I come in here again, Mr Chairman.

In the UK they decided they decided they were going to do this similar sort of process and they allowed themselves I think it was 20 or 30 years to do it. It is not something that I suspect

235 we could do within a matter of months. It will take months, if not years, in amongst other work  
to actually check the footpaths that are on the ground against the map. Then any errors then  
have to be corrected that has the long process which may involve consultation, may involve  
public enquiries, may involve the approval of Tynwald before such things can happen.

240 **Q50. Mr Coleman:** And are you convinced that the rectification process would make your life  
easier rather than extinguishing and diverting and ... ?

**Mr Corlett:** Mr Chairman, yes, I think so.

245 In the example we have been using, the one that the maps should be a record of what is on  
the ground, not necessarily the other way around. For the extinguishment of a highway I think  
we are extinguishing the way on the ground, the correction of the map is the secondary function  
of an extinguishment. So in the instance we were discussing where, I think it was in Port St Mary,  
we have a public right of way marked on the map which goes down the face of a cliff, it has  
never existed on the ground so we have problems where the map is wrong we need to rectify  
the map. We are not extinguishing anything effectively, because nothing has ever existed to  
250 extinguish, but we come up against the problem what do we do with the map? What process  
can we follow to ... ? And that is why we have tried to introduce this about rectification.

**Q51. The Chairman:** Can I just build on that, if I may. You may recall, Mr Corlett, when I was  
255 on the Department of Transport we had an afternoon out with Minister Anderson and we did a  
walk over the right of way, (**Mr Corlett:** Maughold.) , Maughold that is right. Now the track I am  
going to refer to is in Government ownership so it maybe does not have the same level of  
controversy that a private land might have but we walked along a very clear path, *very* clear, and  
I think it was you or one of the others said, 'But do you know where the actual track is?' We did  
not and you pointed to an overgrown gully which was quite a few yards significant distance from  
260 where we were walking.

Do you not think that, yes to use this rectification to reflect what is on the ground might  
seem sensible but could put you into conflict that if it is private land they may not be so keen for  
you to actually make this amendment because it could have quite an impact on the landowner.  
Obviously with Government land maybe there is not the same level of problem, but to move a  
265 track such a distance back to where it was, where the definitive map says it is, could even cause  
financial loss to the parties.

**Mr Corlett:** In some instances I am sure the landowner will not be agreeable, but on the  
270 other hand if the landowner is not agreeable to us rectifying the map we still then end up the  
path on the ground is not the same as that shown on the map. Can we then move on to a  
diversion process which already exists within the legislation, the landowner I have no doubt  
would object to that as well. It just leaves us in a ... we are looking for a process which will take  
us some way or other of rectifying the map. Usually it is the landowner or someone who would  
apply to us for a diversion rather than the other way around, they would approach us and they  
275 would say we would like to divert. This gives us the option to approach the landowner and say  
we think the map is wrong and we would like to start the process.

**Q52. The Chairman:** But the Department is wanting to have the maps reflecting what is on  
280 the land when in some cases the landowner could actually say, 'Right, well actually I am going to  
shut this path off because this is not a path at all.' It might look like a path, it might be used as a  
path but the path is actually down there, so you are now going to have to reinstate your public  
footpath somewhere where it should be. (**Mr Corlett:** Yes.) Do you not see that there is  
potential – ? (*Interjection by Mr Corkish*)

285 **Mr Robinson:** Mr Chairman, perhaps I could clarify the point made by Mr Corlett.

290 We do not see this as an easy remedy to making the maps match what is on the ground. It is far from an easy remedy and there would have to be good justification as to why we were wanting to make the change. The convenience of it just happens to have strayed on to a different path would not be good justification, so there would have to be strong justification. It has to go through several processes, including being approved by Tynwald, and there are many opportunities for the landowner and others to object to any changes that are being proposed.

295 So I do not want the impression to be given that this is a quick fix to relate what is actually on the ground and replace the maps with that. The maps should be, and we appreciate this, the definitive maps, and they are the law as to what is the route and we would not change those, or seek to change them without good cause.

**Q53. Mr Corkish:** So it is true to say the Department have great respect and treat public right of way as a priority in the work they do?

300 **Mr Robinson:** Absolutely, sir.

**Q54. Mr Coleman:** Does that mean that any time anyone wants to refer to the definitive map at the moment, let's say they are going to use it for ... I do not know, whatever, deciding where to build a house or something like that, you virtually have to look at it to see if it is right before you allow access to it?

310 **Ms Goldsmith:** We would do anyway. In any application we would make a thorough check on the ground and on speaking to the landowner prior to taking any action. But the definitive map is, in law definitive, so if there was then an error we would have to follow due process.

**Q55. Mr Coleman:** Definitive but wrong.

**Ms Goldsmith:** Definitive according to the law.

315 **Mr Corkish:** When does definitive mean definitive!

**Ms Goldsmith:** Yes, absolutely.

**Q56. The Chairman:** Could you take us through then the safeguards that you talk about.

320 **Mr Connell:** Well, in fact I have set them out in section 92A:

Before the Department makes any amendment to a definitive map or an associated statement the Department must publish on a website maintained by or on behalf of the Department and in such other ways as it considers appropriate, - details of the proposed amendment ... a notice indicating that it will take into account any objection made to it within 28 days of the first publication of the details ... and giving details of how such objections may be made; and serve written notice on the owner, lessee and occupier of any land affected by the proposed amendment giving the same information as is required by paragraph (a).

However,

Subsection (3) does not apply if the proposed amendment arises in connection with – an order under section 33, 34 or 91;

which are the existing mechanisms for diversion and extinguishment.

or an agreement under section 4 or 87.

which from recollection are dedication.

In a case to which subsection (3) applies, if any objection is received within the time permitted for making it and is not withdrawn, the Department must not make the amendment without the leave of the High Court.

325 So that is not giving Tynwald control but it is giving the High Court the control to actually stop the process if an objection is made. In other words, the Department would have to make an application to the Deemsters to get an order saying, 'Yes you can make the amendment.'

**Q57. The Clerk:** So just to be clear if you use the existing diversion process –

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**Mr Connell:** It comes here.

**The Clerk:** It comes through Tynwald. If you use the proposed new rectification process it does not go through Tynwald.

335

**Mr Connell:** It does not go directly through Tynwald, no.

**Q58. The Clerk:** But there is an opportunity for the High Court to –

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**Mr Connell:** To stop it.

**Mr Robinson:** If an objection is made we cannot do it without leave of the High Court.

**Q59. The Clerk:** And how is a person other than the landowner, lessee or occupier supposed to know which website to look at to spot this?

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**Mr Connell:** Presumably when we ... I am looking to the Department.

**Mr Robinson:** We have our own website. We would be in consultation with the landowner anyway as part of the process so we would not be relying on the landowner happening to look upon our website.

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**Q60. The Clerk:** Well I see that, because it says that you have to serve written notice on the owner. I think Mr Hamish Killip's point was putting things on websites is all very well but people who like to go for a walk on a Sunday afternoon may not be studying the Highways Division website every day of the week. Is a website really a sufficient safeguard?

355

**Mr Robinson:** Through the website and our use of social media the Department believes it has a far greater catchment than the local newspapers reach. Circulation numbers are now, I believe, very low and the Department's social media sites regularly exceed those numbers.

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**Q61. The Chairman:** Have you considered, given that there is not going to be scores and scores of these, issuing a notice like people have to display when they are having planning permission?

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**Mr Corlett:** Mr Chairman, normally if we were looking for a diversion process that is set out within the diversion process that notices have to be put out at either end of the path to be diverted. The notices have to be deposited with the officers of the local authority for viewing by the locals, as well as being put in the newspaper. This is a slightly truncated version of that but possibly not as robust.

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**Q62. The Chairman:** Would that be something the Department would consider?

375 **Mr Robinson:** We would certainly consider it. Planning applications, as I understand it now, are advertised on a website, not in the paper. It does appear to be the more dominant form of communication, rather than newspapers and I appreciate that that is not every section of the community.

380 **Q63. The Chairman:** I think though those with an interest in their areas or the areas where planning is taking place, the now famous yellow notices have gone a long way in informing people (**Mr Corlett:** Absolutely.) And people probably know there is something going on by those notices more than a website or the listing in the paper. So again, I do not know about members of the Committee but I feel that might be worthy for the Department to consider. Especially given that you are not going to be doing, as I said, hopefully not scores and scores of these amendments. It would certainly give people a fair opportunity to find out. They could then go to the website to get the nuts and bolts and the detail, but at least they would be alerted that there is something taking place.

390 **Mr Robinson:** Mr Chairman, I will commit to take that back to the Department and we will certainly review our position.

**The Chairman:** Okay, Mr Coleman.

395 **Q64. Mr Coleman:** Yes. Quite frankly, I am involved in other things where people are told to look on a website. It seems to me that if you are taking an action, you should not rely on the passive person who could be affected looking at your website or using social media. I think, quite frankly, if you are going to take an action you should take an action to make absolutely certain that person is aware – and I do not believe websites are that solution. There are people who do not know that planning is going on near their location.

400 That is my personal view on this and I am taking that stance on another Committee I am dealing with as well. I have a problem with people saying, 'Well, it is up on the website; it is on social media.' I do not use social media and I am fairly computer literate, having been a member of the British Computer Society for over 50 years. I just choose not to use it because I do not want to expose my life to people in the way that people do. So I do not use Twitter and I do not use any of those things. I am a real Luddite.

405 But, again, I have a real distaste when we see these things saying, 'It will appear on the website'.

410 **Mr Corkish:** I think that is part of modernity now, though. There are people who automatically think everybody is glued to the website; they are not. But I am pleased to hear that Mr Robinson will take the suggestion of the yellow notice back to the Department; that shows the Department is willing to –

415 **Mr Coleman:** Well, we have yellow for planning and there could be another colour for something else, so I would use red!

**Mr Corkish:** Yes, very colourful!

420 **Q65. The Chairman:** Any other suggestions? (*Laughter*)  
One of the questions that has arisen is: should you not be bringing the maps up to date under the existing legislation before you *amend* the legislation? In other words, can you not complete this work first, get everything tidied up and then bring in the new provisions?

425 **Mr Connell:** At risk of being a purist, the answer is no. The problem is, one of the things about section 92 which is wrong is that the definition of the definitive map is by reference to repealed legislation. It is therefore technically deficient in the most *appalling* way.

Added to which – and on this point I beg to differ from Mr Killip – whilst *he* may understand the 10 subsections of section 92 as they stand, it takes the brains of an extremely large bear to work out exactly what is going on with the section. Because you see a date in it – of the date in 430 1973 – and say, ‘The right shall be taken to have existed at this date’.

Six subsections and about 500 words later you discover that it actually does *not* mean that, because it only means that if it was originally so recorded upon a *previous* map, which is not now available. So, with respect, to think of waiting until we have got the maps up to date and *then* getting the law up to date is a nice way to think of it, but I think completely impractical.

435 We have an opportunity now to actually make the change and to get it right, and perhaps in view of the discussion we have just had there will be further tweaks to the text when the Bill comes back before the Council; but the opportunity is here to actually make this legislation work properly which, as I say at the moment, technically it does not.

440 **Q66. Mr Coleman:** Do we have the concept of the deed of the lost modern grant over here?

**Mr Connell:** I am not a Manx advocate, I am a member of the English Bar, so I cannot tell you.

I suspect we probably do, but I could not guarantee it. May I write to Jonathan giving the answer to that? I will find out for you rather than just giving you an off-the-cuff.

445 I would expect the answer to be that the adoption of lost modern grant does exist here, but I want to be sure that it does.

**The Chairman:** Thank you.

450 Okay, anything else on this particular ... ? Shall we move on?

**Q67. The Clerk:** May I just pick up on something Mr Connell has just said?

The Committee was asking earlier about yellow notices like the kind used in Planning. The text of the Bill already says that if it goes through as drafted that:

Before the Department makes any amendment to a definitive map ... the Department must — publish on a website ... and in such other ways as it considers appropriate – details ...

455 **Mr Connell:** Yes, that will certainly *permit* the exhibition of notices; it does not *require* it.

**Q68. The Clerk:** I think it might be useful and the Committee might be interested to know the Department's thoughts on whether it would be prepared to have a *requirement* rather than just a permission.

460 **Mr Corkish:** To have it defined.

**The Clerk:** To make the yellow notice system *obligatory* rather than just something you *could* do if you felt like it.

465 **Mr Robinson:** As I say, Mr King, I would not want to speak for the Department off the cuff, but I will certainly take that matter back.

**Q69. The Clerk:** I think it would be really helpful for the Committee if the Department could give a written response to that question.

470 **Mr Robinson:** Yes.

**Q70. The Chairman:** And we thank you for taking that back, because that was one of the concerns I think as well, about people being alerted to these.

Any other points before we move on to a couple of the other subjects?

475 Mr Connell.

**Mr Connell:** Sir, could I just add one further comment?

Because the definitive maps as in the current legislation are defined by reference to extinct legislation, if the Department now wished to produce a replacement definitive map it could not  
480 actually deposit them at the General Registry. This is because the reference is to the Act which was repealed by the Highways Act, and so the definitive maps are effectively fixed in time.

We actually have them here today, but in the event that they were destroyed by a fire we could not actually replace them in the Registry, because of the fact that the reference is to a particular set of maps from a particular point in time. And that is one of the other reasons why I  
485 want to try and get rid of the existing mismatch in relation to the reference to the definition of the definitive map.

I should have said that earlier – I do apologise.

**Q71. Mr Coleman:** Is this not in your response number 1, where it said:

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‘... the reference is now qualified by “originally”?’

**Mr Connell:** Yes.

But you will see that there is an alternative definition. The definition of definitive map includes ‘those maps and copies subsequently produced by the Department representing  
495 subsequent changes’ – so that it is not just the original set.

**Mr Corkish:** Just one.

**Mr Connell:** Well, the problem is that at the moment there is just one – or two, I think – and  
500 if anything were to happen to them then, strictly speaking, the law would become completely inoperable. And that is just not desirable at all.

**The Chairman:** So going forward, the obvious way is digital, isn’t it?

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**Mr Corkish:** Digital mapping.

**Q72. The Chairman:** And that would presumably be very easily made available online as well, for people to search. So will this, then, cover that provision?

**Mr Robinson:** Mr Chairman, the Department is very keen to digitalise a lot of its services. We now have the Government cartographer working within Highway Services and he is actively working on a project to bring together this, amongst the other information Highway Services hold, to make it digitally available to a wider audience.

It is now very troublesome to come and view it, very few people do come and view it. They  
515 take legal advice when they are viewing it and we want to make that very simple. Ultimately – and I do not know the legal ramifications of this – we would like to make the master copy, the actual definitive map, a digital copy so that it is safe.

**Mr Connell:** That will be possible under the new legislation; it is clearly *not* possible under the  
520 current state of the law.

525 **Q73. Mr Coleman:** I think the point though, surely, is that you actually have a major risk; and I hope it is red on your risk register that these definitive plans are ... I mean, you *have* to get a copy of them, even though in the future you may not be able to use them in court, but at least you would have a reference point.

Then when you want to get on to the full digital ... I mean, the MUA has digital mapping, Water has it – everyone has got it, really. I am not even saying do it digitally, just get a paper copy of it and stick it somewhere else!

530 **Mr Robinson:** I think just to clarify, we do have copies of it but technically they would not be ‘the map’.

535 **Mr Connell:** Well, not only *would* they not be the map they *cannot* be the map, because the map has to be that which was deposited because of the way the legislation is drafted.

**Q74. Mr Coleman:** The legislation should say ‘or a copy with a seal on it which says this is a genuine copy of the original.’

540 **Mr Connell:** Yes, a certified copy would have been the alternative, but the legislation does not say ‘provide’.

It is one of the reasons why in the draft that I have given you, subsection (1) of the new section 92 ‘preserves the status of the existing maps’. But then subsection (2) makes provision for ‘copies to be created’, which represent the land at a scale of effectively six inches to the mile or greater; and either of those maps would constitute a definitive map for the purposes of the rest of the Act.

And that gives you the security point that was concerning Mr Coleman.

550 **Q75. The Chairman:** I suppose that is where Chambers would come up with the right wording to ensure that the digital version is the authentic one, that then gets displayed on computer screens and presumably printouts are made from that, etc. So that would be a requirement.

I hope that is not a fire engine going to your map department! *(Laughter)*

**Ms Goldsmith:** We have got it here, so it’s alright.

555 **Q76. The Chairman:** So as long as one of us leaves with the map, we are okay? *(Laughter)*

Right, have we got anything more on definitive maps, before we just move to a couple of other little items? Because, as you know, the Committee is looking at the Bill, so there are a couple of other queries that we would like to discuss, if possible.

560 The making up of unadopted roads: what do you mean – and this is with regard to question 18 which was sent to you – when you say, ‘the provisions are complicated’? I am sure they are ...

565 **Mr Connell:** Since, as you will see, that was not my comment, but that of the external draftsman who supplied them – I cannot, unfortunately, read his mind. But if you look at the provisions in the Highways Act – a copy of which I have here should you want it – they *are* extremely complicated.

**Mr Robinson:** Mr Chairman, from the Department’s perspective the change is primarily to allow us to update those procedures by regulation, rather than changes to primary legislation – those changes to regulation would still be laid before Tynwald.

570 **The Chairman:** Okay.

**Q77. Mr Coleman:** Can I ask a question about that, just to put my own mind at rest?

575 So are we saying that if there was a road on an estate which has not been adopted, let's say, would you proactively say, 'We want to adopt this'? Or would you be contacted by the residents of that estate to say, 'We would like you to adopt this road'?

**Mr Robinson:** Mr Chairman, if I may, there are lots of roads on the Isle of Man that are not currently adopted – some in very bad condition, some in excellent condition. Whether the residents using those roads know they are adopted or not adopted I am not entirely certain.

580 In the main, residents want to have their roads adopted. We have a policy in the Department that defines how that will take place and we have to comply with the legislation as well. That usually means that the residents, or the owner of the road, have to bring it up to the highway standard before it is adopted. The Department can choose to pay half of that value.

585 But road construction is expensive. I can give you the example of Main Road, Port St Mary where we are in negotiations with the residents about making up and adopting that road; and we are talking hundreds of thousands of pounds.

The Department can, if it wishes to, adopt a road and make the residents pay to have that road brought up to standard. However, it chooses, and always has chosen, *not* to use that power but to only go down that path in a consensual way.

**Q78. Mr Corkish:** Sorry, Chairman, in my experience the issue of unadopted roads being acted upon, for something to happen, has been from the residents usually – from constituency experience.

595 Does that happen? Is that a frequent request?

**Mr Robinson:** I think we have regular enquiries, but when they realise the financial implications –

600 **Mr Corkish:** They back off.

**Mr Robinson:** Usually they back off.

**Q79. The Chairman:** I think it is fair to say it is unlikely people would have that sort of capital lying around to put it into something like that.

605 Do you think the expectation is that you will just come along and take it over and re-tarmac it?

**Mr Robinson:** There is certainly an expectation and there are certainly some major roads in housing estates around the Island that, to all intents and purposes, people would believe are adopted – but they are not. And at some point, when the road condition gets into a bad way they will undoubtedly come to the Department and expect action.

**Q80. Mr Corkish:** But the cost – and you mention hundreds of thousands of pounds – on occasions there are going to be many instances where some people in an estate can afford it and some cannot. So you are saying that an individual contributing towards that could be facing a very hefty amount?

**Mr Robinson:** Yes. If the Department chooses to proceed with adoption the charge is made on a metreage frontage proportion basis. The Department can take into account cases of hardship, but any shortfall needs to be made up by the other residents. So that is difficult.

620 In the case of Main Road, Port Erin, we are also considering allowing the charge to be put against the property in cases of hardship, so that the person does not have to find the money now but when the property is sold –

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**Mr Corkish:** Right, that was a follow-up question –

**Mr Robinson:** – it is taken.

630 **The Chairman:** Sorry. Yes, Jonathan?

**Q81. The Clerk:** Sorry if you have already answered this but you have introduced in the Bill a proposal to be able to amend any provision of Part VII by regulations.

What sort of amendments do have in mind?

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**Mr Corlett:** This is in clause 14, Mr Chairman, then, is it?

**The Clerk:** Clause 25 of the Bill introduces a new proposed section 99A of the 1986 Act, which says:

The Department may make regulations amending any provision of this Part.

640 That is part VII.

Part VII is all about the making up of unadopted roads, and it has a power for the Department to make up an unadopted road and to apportion the costs to the people who live along the road.

So it is quite an important Part because it means you are coming up to people's houses and saying they are going to have to pay you for some work which you have decided to do. And as

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the law stands at the moment, the Department can only pay up to 50% of the cost itself.  
So why do you need to be able to amend this by regulations?

**Mr Robinson:** At this time we do not have any plans to make amendments, but from time to time it would be preferable to amend by regulation rather than primary legislation.

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**Q82. The Chairman:** Do you not think this is quite a draconian power, really, that people can buy properties knowing the road is unadopted and are quite happy with it; where it could be, effectively, on the whim of the Department to come along, adopt the road and then say, 'We are going to put a charge against your property because you have got to foot the bill'?

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That really, surely, is a –

**Mr Robinson:** Mr Chairman, under current policy the Department would only seek to do that if over 50% of the residents voted in favour of the adoption.

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**Q83. The Chairman:** But how is that, such that it gives 50% of them the right to decide over another legal landowner whose property happens to be adjacent to the highway? They may not even have a car, so they might not be interested in the highway.

**Mr Connell:** No, sir, but they probably have their groceries delivered in that case!

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Can I suggest, sir, that in the event that you postulate, a conveyancer who failed to draw the attention of a purchaser of a property on an unadopted road that there was the possibility the road might be adopted at some future stage, would be being negligent.

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**Q84. Mr Corkish:** That could happen now, with respect, to people who have lived in a house for 25 to 50 years. (**Mr Connell:** Indeed.) As indeed I know through my constituency, there are dreadful lanes whereby they are so bad that the bin men would not go up because of the damage likely to affect a bin wagon.

So would facilities such as that – regular delivery vehicles – have any weight with the Department?

675 **Mr Robinson:** As it stands, no, it does not; but could it in the future? Potentially.

**Q85. The Chairman:** I am just uneasy about how you can suddenly put a charge against somebody's property for a decision which is being made by their neighbours. I think it is highly unreasonable.

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**Mr Coleman:** It is fairly common, though.

**Mr Connell:** Yes, it is.

685 **Mr Corlett:** Mr Chairman, may I make a comment?

In discussions I have had with colleagues in the past on this is, yes, it does seem unreasonable – and it seems unreasonable to some of *us*. But working on that basis the people may never get the road in front of their house done up, and that road may be in a terrible state.

690 But the other way, in terms of putting a charge on the property, the likelihood is the value of that property would increase quite significantly if the road in front of it was done up, and also maintained, at the public expense.

You may lose out but –

695 **Mr Corkish:** If you have been living in the house for 50 years it will not worry you anyway, because you are not going to get any benefit out of it! (*Interjections*) You cannot please all the people all of the time!

**The Clerk:** The children might care! (*Laughter*)

700 **Q86. The Chairman:** Do you have anything else on that particular point? No?

This brings us on to a subject I have raised, and I know Mr Robinson will know about this, and that is the works taking place by other bodies – gas, electric, telephone – digging up the road. The DOI comes along and does a nice job of resurfacing the road and then in a short period of time – well it does not even have to be a short period of time, it could be *any* period of time – up comes the road and then it goes down with the most appalling standard of work.

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I see there is the clarification in this about regulating work carried out, and I think it would be remiss of me not to mention this in the Committee here today. What are you going to be doing to sort this problem out where they are destroying the roads with bad workmanship of reinstating when they have been digging up the roads?

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The recent example which I know Mr Robinson knows I am going to make is the Glen Darragh Road. The super job done by the Department was destroyed, in my view, and it is like on a boneshaker going down there now in parts.

What is the Department going to do? And what will this enable you to do to sort this problem out?

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**Mr Robinson:** In a recent change to the primary legislation the Department requires contractors who go into the road on behalf of the Statutory Boards to replace the full width of the carriageway. I think this was perhaps ill-thought out at the time because we have no option, we *must* ask them to do that. In many cases it is not practical, as the shape of the road does not make that possible for them. So we come to a solution.

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Part of this being able to change by regulation, as opposed to primary law, will allow us to adapt more quickly to changes of circumstances such as those which are impractical. We are intending to put a great deal of focus over the next couple of years into the standard of reinstatements; we are in the process of reclassifying the road network so that we can be far more specific at the time of entry, on what the remaking standard will be when it is remade. We will then be checking and testing to those standards in a risk-based way.

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730 I share the Chairman's concerns about the *failure* – it appears to us – to be able to co-ordinate properly with the statutory regulators on occasions. I get concerned that there are very old pieces of infrastructure in the road that are not put right before we put the road surface right.

I do not know that we have the solution to that today, but by allowing us to make changes in regulation some safeguards will still remain, but we can be more fleet of foot in adapting to circumstances and putting a better set of provisions in place.

735 **Q87. The Chairman:** And can those regulations specify an engineering standard? When we see a patch being done, I cannot understand how you can lay a piece of tarmac and it is nice and flat and smooth, yet the patch is horrendous.

740 So will those regulations ensure that there is an actual engineering standard whatever that may be? It is up to your engineers to come up with the right wording –

**Mr Robinson:** It will make it easier for us to define which standard we want them to use in the making-up of the road, which is not clear at the moment; the standards are difficult to interpret at best. Also, often they are going into roads which are of very poor construction anyway – possibly just tarmac on the ground. And what we will be asking them to put back is something better than that, in that particular area.

745 So it will make that easier.

**Q88. The Chairman:** So are you saying that, at the moment, there is not a lot you can do? They can say, 'We have opened up the road, we have fixed our valve ...' or whatever it is, 'we have sealed it back up; and you might not like the standard but there is nothing you can do.'

750 Is that what you are saying? At the moment you have not got the – ?

**Mr Robinson:** The code standard is one that is used in the UK. It is probably over an inch thick. It is a minefield to try and interpret it and three people could interpret it in three different ways.

755 So having the argument about whether something was put back to standard or not is currently difficult. We are hoping that with the work we are doing to reclassify the road network and setting standards at the outset, it will make that far more enforceable.

760 **Q89. Mr Corkish:** A simple question: there would be, no doubt, liaison between the Department of Infrastructure and the various undertakings – gas, water, etc. – that work is going to commence on a certain stretch of road. Is there anything in their programme of repairs that can marry up with the work that we are doing, so that the job is done?

765 It seems simple, but does that happen? Is there any liaison there?

**Mr Robinson:** Yes, there are two levels of liaison. There is a strategic infrastructure group which looks primarily at the longer-term direction of infrastructure across the Island; and an operational group which is looking in the shorter term – the next two years, three years of operational activity.

770 The Department is now good, I would say, at providing a forward programme of its work and its intentions to the Statutory Boards. The Statutory Boards tend to work on a method of 'fix when a problem appears' as opposed to planned replacement of assets, which puts us slightly at conflict. Often with problems, such as that on the Glen Darragh Road, the Water Authority would say they did not have any issues prior to the road surface being re-laid – and afterwards there were four or five different issues within a short period of time.

775 We do liaise, we are not perfect at it. I think things are much better than they were and they are heading in the right direction.

780 **Q90. Mr Corkish:** Yes, because there must be times when the Water and the Gas realise that there are sections which are going to need repair within x amount of time.

Do you see reflected in the liaison you have that there is the wherewithal ... not forgetting about cost, but that they could say, 'We could bring that programme forward perhaps to meet in with ...' – and in the long term, save money to the public purse?

785 **Mr Robison:** I think this is where the conflict partially arises in that there does not appear to be, from our perspective, a systematic replacement of old assets. So I certainly am aware of cases where cables and pipes have been over a hundred years old and there has been resistance to going in and replacing those as part of our updating schemes.

790 On large schemes, such as the promenade, it is worth having a very large argument about, and we have all agreed that assets will be replaced while we are in the road. On smaller schemes that may not get to me, they will be dealt with at an operational level, and there is resistance to spending the money.

795 **Q91. Mr Corkish:** I can understand that but it does not say much for joined-up Government, where you look at it long-term that this could be a saving from a public accounts perspective. That would be the ideal way forward – but ideal does not always work, I know.

800 **Mr Robison:** No, and I certainly would not want to diminish the problems that the Statutory Board have. They have a tight budget to meet and they are clearly doing that in the way that they think is best.

805 **Q92. Mr Corkish:** But my fundamental question was – and I think you have answered – that there is a *deal* of liaison that goes on between the Department of Infrastructure and the undertakings.

**Mr Robison:** There is a great deal of liaison –

**Mr Corkish:** – and more of that probably now than ever.

810 **Mr Robison:** At every project there is liaison and we have several boards where bigger issues can be aired. I think the liaison we currently have is better than we have had, certainly to my knowledge, in a long time.

815 **Q93. Mr Corkish:** And just an observation – a bit naughty perhaps – but do you think that effort from the Department of Infrastructure is met as widely as it could be by the undertakings?

In other words, do we need more understanding of a coming-together of what could be achieved at a better cost to the public purse?

Is that a Department's fault, is it ... no, you shouldn't answer that, I suppose really. But is that liaison as good as it should be or is it being worked upon?

820 **Mr Robison:** It is being worked upon, it is not as good as it should be but it is improving; and there is a willingness on all parts to improve, which may not have been there in the past.

825 **Mr Corkish:** Well, perhaps the report that comes out from here may hasten that on a little bit.

**Q94. Mr Coleman:** Can I just make one point about that and I am speaking as the Vice-Chairman of the Manx Utility Authority.

830 Part of the problem with Statutory Boards is they each have their own programmes and they have their own urgencies. In other words, if a pipe is blowing every week, serving 200 people,

then they would see that as an urgency. But that still does not prevent them; and I know that they have done – certainly more so when it was the MEA and the Water Authority – *shared* holes going in the ground. And obviously the only way you can remedy that is to have long-term strategies which are the same for all of the people who wish to dig the road up. And  
835 unfortunately the operational exigencies of that are not always possible, because of people getting brown water which is making all their lovely white sheets go brown.

So I am not saying we should not do it, I think we should; but it is somewhat difficult until the infrastructure of the Island gets to a certain level for *everyone*.

840 **Mr Robinson:** I agree, Mr Chairman, there will always be a slight mismatch in direction.

**Q95. The Chairman:** Okay, thank you.

If we can draw to a close now; but just before we do, is there anything you would like to add that you would like us to know about before we close the opportunity? No?

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**Mr Robinson:** No. I think we are happy, Mr Chairman, thank you.

**The Chairman:** Okay, well thank you very much indeed for your time this afternoon, for coming in, and for the correspondence we have also had.

850 So thank you very much; and the Committee will now sit in private.

*The Committee sat in private at 3.37 p.m.*