



PROPERTY SERVICE CHARGES (AMENDMENT) BILL 2019

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 R. K. Harmer MHK

INTRODUCTION

1. These explanatory notes relate to the Property Service Charges (Amendment) Bill 2019. They have been prepared by the Department of Infrastructure 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. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. A petition for Redress of Grievance was presented on the 5th July 2010 by a number of residents of the private bungalow development at Cannan Court, Kirk Michael, in respect of a dispute which had arisen over certain service charges payable by the petitioners to the Kirk Michael Community Housing Association (KMCHA).
4. A Select Committee was appointed to consider the Petition and a report and recommendations were subsequently published.
5. The Select Committee considered that an extension of the Property Service Charges Act 1989 ("the 1989 Act") to freehold property in certain circumstances of contract, in order to allow an appeal to the Isle of Man Rent and Rating Commissioners for a determination with regard to the reasonableness of expenses which make up a service charge, would be beneficial. In making this decision the Committee recognised that this would not resolve the issues as presented by the Petitioners.
6. The Select Committee's recommendation was as follows:

"That the provisions of the Property Service Charges Act 1989 be extended to apply to service charges in relation to freehold property, but only:

- (a) in circumstances where payment of the service charge concerned is an obligation which the freeholder cannot avoid other than by surrendering the freehold; and*
- (b) where service charges are applied in relation to a "sheltered housing" agreement (whether and however defined), on the basis that resident subject to such agreements are likely to be more vulnerable."*

7. Tynwald accepted the recommendation on 12 April 2011.
8. This Bill arises from that recommendation.
9. This Bill is promoted by the Department of Infrastructure ("the Department") and its main purpose is to enable the Department to apply, by order, the Act, or certain provisions of it, to a person —
 - a. other than a tenant; and
 - b. who as a condition of acquiring an estate, right, title or interest in the freehold of a dwelling, is obliged to pay a service charge throughout the period the person continues to hold the estate, right, title or interest in the freehold of a dwelling of the dwelling.

THE STRUCTURE OF THE BILL

10. The Bill contains 4 clauses.

Clause 1: Title

11. This clause gives the Act resulting from the Bill its short title. There is no commencement clause, so the Bill will come into operation on the announcement to Tynwald of Royal Assent.

Clause 2: Property Service Charges Act 1989 amended

12. This clause introduces the amendments to the 1989 Act.

Clause 3: Long title amended

13. This clause amends the long title of the 1989 Act to enable that Act to apply to owners of freehold dwellings in certain circumstances.

Clause 4: Section 12B inserted

14. This clause inserts a new section 12B (application) into the 1989 Act. The new section 12B confers powers on the Department of Infrastructure, by order, to apply the 1989 Act or certain provisions of it as may be specified in the order to a person —
 - a. other than a tenant; and

- b. who as a condition of acquiring an estate, right, title or interest in the freehold of a dwelling, is obliged to pay a service charge throughout the period the person continues to hold the estate, right, title or interest in the freehold of the dwelling.
- 15. An order made under the new section 12B requires Tynwald approval.

HUMAN RIGHTS

- 16. It is considered that the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

FINANCIAL EFFECTS OF THE BILL AND EFFECT ON HUMAN RESOURCES

- 17. This Bill may result in an increase in public expenditure, as an order made under the new section 12B has the potential to increase the number of proceedings before the Isle of Man Rent and Rating Appeal Commissioners or the High Court. The Bill is not expected to reduce the income of any public body.