



Isle of Man

Ellan Vannin

**TOWN AND COUNTRY PLANNING
(AMENDMENT) BILL 2019**

TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2019

Explanatory Memorandum

1. This Bill is promoted by Minister for Policy and Reform on behalf of the Council of Ministers.
2. *Part 1* comprises *clauses 1 and 2* which deal with the short title of the resulting Act (“the Act”) and its commencement.
3. *Part 2* includes 7 divisions, each of which makes amendments to the Town and Country Planning Act 1999 (“the 1999 Act”).
4. *Division 1* comprises *clauses 4 to 8* which make provision for national policy directives.
5. *Clause 4* amends section 2 of the 1999 Act (development plan) so as to insert reference to national policy directives as one of the matters which the Cabinet Office must take into account when preparing or revising a development plan. *Clause 4* also inserts a new subsection (2B) by which when a development plan is revised or a new plan prepared, the Cabinet Office shall recommend to the Council of Ministers that a national policy directive remains in operation or is revoked.
6. *Clause 5* inserts a new section 2A into the 1999 Act which empowers the Council of Ministers, after consulting such bodies as it thinks fit, to specify a national policy directive, by order, when it is satisfied that to do so is in the national interest. Further provision about the making of national policy directives shall be made by regulations. The Council of Ministers must publish a national policy directive and must state reasons for the policy. The new section 2A also provides that in the event of an inconsistency between a national policy directive and certain matters required to be considered when determining applications for planning approval (set out in section 10(4) of the 1999 Act), the provisions of the national policy directive prevail.
7. *Clause 6* amends section 5 of the 1999 Act (validity of plans) so as to extend the statutory appeal procedure available to any aggrieved person, to national policy directives as well as to the development plan or any strategic plan or area plan comprised in the development plan, or by any revision or repeal of a strategic plan or area plan.
8. *Clause 7* amends section 10(4) of the 1999 Act (determination of planning applications) so as to insert a national policy directive as a matter to be considered when determining applications for planning approval.

9. *Clause 8* amends section 45 of the 1999 Act (interpretation) so as to insert a definition of national policy directive.
10. *Division 2 - clause 9* amends section 10(6) of the 1999 Act (determination of planning applications) by inserting into the list of matters for which a development procedure order may make provision for making minor changes to a planning approval and the procedure for determining applications for such changes. A new subsection (6A) is inserted into section 10 of the 1999 Act which sets out certain matters for which provision must be made in any development procedure order which provides for the grant of minor changes to a planning approval.
11. *Division 3 - clause 10* makes amendments to section 11 of the 1999 Act (reference of applications to Council of Ministers) in relation to referral of applications for planning approval to the Council of Ministers, by adding a power for the Department of Environment, Food and Agriculture to refer certain planning applications to the Council of Ministers.
12. *Division 4* comprises *clauses 11 and 12*. *Clause 11* inserts a new section 13A into the 1999 Act which empowers the Council of Ministers, subject to Treasury concurrence, to make regulations providing for a charge to be known as “Community Infrastructure Levy”. The Council of Ministers may delegate its powers under the new section 13A (other than the regulation making power). The clause specifies the matters for which such regulations may make provision.
13. *Clause 12* amends section 45 of the 1999 Act so as to insert a definition of Community Infrastructure Levy.
14. *Division 5* comprises *clauses 13 and 14*. *Clause 13* inserts a new Part 4A into the 1999 Act which deals with the planning committee. In clause 39B of the new Part 4A the “old planning committee” and “planning committee” are defined. In clause 39C, the Council of Ministers is required to constitute, by order, the planning committee to carry out any functions specified in such an order and currently performed by the old planning committee, for which it is authorised under section 3 of the Government Departments Act 1987 or which are transferred to it by order under Schedule 2 to that Act. Section 39E of the new Part 4A specifies that until an order is made under section 39C, the old planning committee is taken to be the planning committee. Transitional arrangements are also provided for concerning existing applications under consideration and existing consents and determinations, in sections 39F and 39G.
15. *Clause 14* amends section 45 of the 1999 Act (interpretation) by inserting definitions of the planning committee and planning authority.
16. *Division 6* - comprises *clause 15*. *Clause 15* amends section 40 of the 1999 Act (involvement of outside organisations in planning) by making the establishment, by the Council of Ministers, of a consultative body, discretionary

rather than mandatory and by changing the current mandatory requirement for the Cabinet Office to consult that body, to a discretionary power.

17. *Division 7 – comprises clauses 16 and 17. Clause 16* amends section 45 of the 1999 Act so as to insert a definition of “general importance”.
18. *Clause 17* inserts a new section 45A into the 1999 Act, which sets out the meaning of “general importance” for the purposes of the 1999 Act and empowers the Council of Ministers to issue guidance about the meanings of any term used in that section. Under the new section 45A there is provision for the Council of Ministers by order to amend subsection (1) of that section and to make further provision, or amend or repeal an existing provision, about a consideration or matter which is, and is not, within subsection (1), and such an order may amend the resulting Act.
19. *Part 3 - clause 18* makes consequential amendments to section 44 of the 1999 Act (Tynwald control of orders and regulations).
20. The Act is not expected to have any financial or human resource implications save for the potential to charge community infrastructure levy if the enabling power in the new section 13A is exercised.
21. 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.



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TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2019

1 A **BILL** to amend the Town and Country Planning Act 1999 to make provision
2 for national policy directives; to clarify the matters for which provision may be
3 made in a development procedure order; to clarify the circumstances in which
4 an application for planning approval may be referred to the Council of
5 Ministers; to provide an enabling power for a community infrastructure levy; to
6 provide for the constitution of the planning committee; to amend section 40 of
7 that Act; to define general importance; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

8

PART 1 – INTRODUCTORY

9

1 Short title

10

The short title of this Act is the Town and Country Planning (Amendment) Act 2019.

11

12

2 Commencement

13

(1) This Act (other than section 1 and this section) comes into operation on such day or days as the Council of Ministers may by order appoint.

14

Tynwald procedure — laying only.

15

16

(2) An order under subsection (1) may include such consequential, incidental, supplementary, savings, transitional and transitory provision as the Council of Ministers considers necessary or expedient.

17

18

**PART 2 – TOWN AND COUNTRY PLANNING ACT 1999
AMENDED**

3 Town and Country Planning Act 1999 amended

The *Town and Country Planning Act 1999* is amended as follows.

DIVISION 1 – NATIONAL POLICY DIRECTIVES

4 Section 2 amended

(1) In section 2(2A) (development plan), after “*Coastline Management Act 2005*”, insert “and any national policy directive made under section 2A (national policy directives)”.

(2) After subsection (2A), insert –

“(2B) Having taken a national policy directive into account in the preparation or revision of a development plan, the Cabinet Office shall recommend to the Council of Ministers that the national policy directive –

- (a) remains in operation; or
- (b) is revoked.”.

5 Section 2A inserted

After section 2 (development plan), insert –

“2A National policy directives

- (1) The Council of Ministers may, whenever it is satisfied that it is in the national interest, by order, issue a national planning policy directive (“national policy directive”).
- (2) Before making an order under subsection (1) the Council of Ministers shall consult such persons as it thinks fit.
- (3) A national policy directive has effect for the period specified in the order under which it is issued or, if no period is specified, until revoked.
- (4) The Council of Ministers shall by regulations make further provision about the making of national policy directives under this section.
- (5) A national policy directive shall include reasons for the policy set out in the directive.

- 1 (6) The Council of Ministers shall arrange for the publication of a
 2 national policy directive in a manner the Council considers will
 3 bring it to the attention of those likely to be affected by it.
- 4 (7) In the event of any inconsistency between a national policy
 5 directive and the matters referred to in paragraphs (a), (b) and (c)
 6 of section 10(4) (determination of planning applications), the
 7 relevant provisions of the national policy directive shall prevail.”.

8 6 Section 5 amended

9 In section 5 (validity of plans) —

- 10 (a) in the section heading, after “plans” insert “etc”;
- 11 (b) in subsection (1) after paragraph (b), insert —
 12 “ or
 13 (c) any national policy directive,”; and
- 14 (c) for subsection (2), substitute —
 15 “(2) If any person aggrieved by the development plan or any strategic
 16 plan or area plan comprised in the development plan, or by any
 17 revision or repeal of a strategic plan or area plan or by any
 18 national policy directive, desires to question the validity of the
 19 plan or of the revision or repeal or the national policy directive on
 20 a ground specified in subsection (3), the person may, within 6
 21 weeks of the publication of the plan, revision or repeal or the
 22 national policy directive (as the case may be), apply to the High
 23 Court.
- 24 (3) The grounds referred to in subsection (2) are, in relation to the
 25 development plan or any strategic plan or area plan comprised in
 26 the development plan, or by any revision or repeal of a strategic
 27 plan or area plan or by any national policy directive (as the case
 28 may be) —
- 29 (a) that it is not within the powers conferred by this Part; or
 30 (b) that any requirement of this Part has not been complied
 31 with in relation to the preparation, adoption, revision or
 32 repeal of the plan or the making of the national policy
 33 directive.
- 34 (4) On an application under subsection (2), the High Court —
 35 (a) may by interim order wholly or in part suspend the
 36 operation of the plan, of the revision or repeal, or the
 37 national policy directive either generally or in so far as it
 38 affects the property of the applicant, until the final
 39 determination of the proceedings;
 40 (b) if satisfied that the plan, revision or repeal or the national
 41 policy directive is wholly or to any extent outside the

powers conferred by this Part, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of this Part, may wholly or in part quash the plan, the revision or repeal or the national policy directive either generally or in so far as it affects any property of the applicant.”.

7 Section 10 amended — national policy directives

In section 10(4) (determination of planning applications), after paragraph (a), insert —

“(ab) any relevant national policy directive under section 2A;”.

8 Section 45 amended — national policy directives

After the definition of “land” in section 45(1) (interpretation), insert —

““national policy directive” means a national policy directive issued under section 2A(1);”.

DIVISION 2 — DEVELOPMENT PROCEDURE ORDERS

9 Section 10 amended — development procedure orders

(1) In section 10(6) (determination of planning applications – provisions which may be made in a development procedure order), after paragraph (e) insert —

“(f) the grant of minor changes to a planning approval.”.

(2) After section 10(6), insert —

“(6A) If a development procedure order makes provision for the grant of minor changes to a planning approval, the order shall include provision for —

- (a) the procedure for the determination of applications for minor changes; and
- (b) the making of orders for the payment of costs in connection with such an application.”.

DIVISION 3 — REFERRAL OF APPLICATIONS TO THE COUNCIL OF MINISTERS

10 Section 11 amended

For section 11(1) (reference of applications to Council of Ministers), substitute —

“(1) If —

- (a) it appears to the Department that an application made to it for planning approval is an application to which

- 1 subsection (1A) applies, it shall refer the application to the
 2 Council of Ministers and the Council may direct that the
 3 Council shall determine the application;
- 4 (b) it appears to the Council of Ministers that an application
 5 made to the Department for planning approval –
- 6 (i) is an application to which subsection (1A) applies;
 7 and
- 8 (ii) the application has not been referred to it under
 9 paragraph (a),
- 10 the Council of Ministers may direct that the application
 11 shall be referred to and determined by the Council.
- 12 (1A) This subsection applies to an application which appears to the
 13 Department or to the Council of Ministers, as the case may be, –
- 14 (a) to raise considerations of general importance to the Island;
 15 or
- 16 (b) that for some other reason ought not to be determined by
 17 the Department.”.

18 DIVISION 4 – COMMUNITY INFRASTRUCTURE LEVY

19 **11 Section 13A inserted**

20 After section 13 (agreements regulating development of land), insert –

21 *“Community Infrastructure Levy*

22 **13A Community infrastructure levy**

23 P2008/29/205-223 and drafting

- 24 (1) The Council of Ministers may, with the concurrence of the
 25 Treasury, make regulations providing for the imposition of a
 26 charge to be known as Community Infrastructure Levy (“CIL”).
- 27 (2) The Council of Ministers may delegate to any member or officer
 28 of the Department, or any other person, its functions under this
 29 section, other than the power to make regulations under
 30 subsection (1).
- 31 (3) A delegation by the Council of Ministers under subsection (2)
 32 may impose conditions with which a person exercising a function
 33 under the delegation must comply.
- 34 (4) Regulations made under subsection (1) may include provision
 35 about the matters in respect of which CIL may be charged and the
 36 procedures to be followed in connection with CIL.

- 1 (5) Without limiting subsection (4), the regulations may make
2 provision for —
- 3 (a) procedures to be followed by the Council in proposing to
4 begin charging CIL;
- 5 (b) procedures to be followed by the Council in relation to
6 charging CIL;
- 7 (c) procedures to be followed by the Council in proposing to
8 stop charging CIL;
- 9 (d) consultation;
- 10 (e) the form and content of documents;
- 11 (f) setting rates or other criteria;
- 12 (g) the collection of CIL and provision for payment on account
13 or by instalments;
- 14 (h) the repayment of CIL (with or without interest);
- 15 (i) the matters to which received CIL may be applied;
- 16 (j) the terms and conditions of appointment and
17 remuneration of any person in relation to charging,
18 collecting or the enforcement of CIL;
- 19 (k) the reimbursement of expenditure incurred by the Council
20 (including provision for enforcement);
- 21 (l) combining procedures in connection with CIL with
22 procedures for another purpose of the Council (including a
23 purpose of the Council in another capacity);
- 24 (m) procedures to be followed in connection with actual or
25 potential liability for CIL;
- 26 (n) procedures to be followed in respect of an exemption from
27 CIL or a reduction of CIL;
- 28 (o) how the following powers are to be used, or are not to be
29 used —
- 30 (i) section 13 (agreements regulating development of
31 land); and
- 32 (ii) section 109A of the *Highways Act 1986* (agreements
33 as to execution of works);
- 34 (p) the exercise of any other power relating to planning or
35 development;
- 36 (q) permitting a person to exercise a discretion in respect of
37 any matters specified in the regulations;
- 38 (r) giving guidance by the Council about any matter
39 connected with CIL; and
- 40 (s) the contravention of the regulations to be an offence and
41 prescribe a penalty on summary conviction —

- 1 (i) where the offence comprises a failure to pay CIL, a
 2 fine not exceeding twice the amount of the CIL due;
 3 and
 4 (ii) in any other case a fine not exceeding level 4 on the
 5 standard scale.
- 6 (6) Without limiting subsection (4), CIL regulations may —
 7 (a) make provision that applies generally or only to specified
 8 cases, circumstances or areas;
 9 (b) make different provision for different cases, circumstances
 10 or areas;
 11 (c) provide, or allow a charging schedule to provide, for
 12 exceptions;
 13 (d) confer, or allow a charging schedule to confer, a
 14 discretionary power on the Council or another specified
 15 person;
 16 (e) apply an enactment, with or without modifications; and
 17 (f) make incidental, consequential, supplementary,
 18 transitional or transitory provision or savings (and may
 19 include provision or savings disapplying or modifying the
 20 effect of or amending an enactment).”.

21 **12 Section 45 amended — Community Infrastructure Levy**

22 After the definition of “building preservation notice” in section 45(1)
 23 (interpretation), insert —

24 ““CIL” has the meaning given in section 13A(1) (Community
 25 Infrastructure Levy);”.

26 DIVISION 5 — PLANNING COMMITTEE

27 **13 Part 4A inserted**

28 After Part 4 (enforcement of control) insert —

29 **“PART 4A – THE PLANNING COMMITTEE**

30 *Planning Committee*

31 **39B Definitions for sections 39C to 39G**

32 In sections 39C to 39G —

33 “**planning committee**” means the planning committee constituted under
 34 section 39C; and

1 “old planning committee” means the body of persons known as the
 2 “Planning Committee” to which certain functions of the
 3 Department under this Act and any orders or regulations made
 4 under it were delegated immediately before the enactment of the
 5 *Town and Country Planning (Amendment) Act 2019*.
 6

7 39C Planning committee

- 8 (1) Subject to this section, the Council of Ministers shall, by order
 9 (“the constitution order”), constitute a committee (the “planning
 10 committee”) to carry out any of the functions under this Act to
 11 which subsection (5) applies.
- 12 (2) The constitution order may in particular provide for —
- 13 (a) the constitution of the committee;
 - 14 (b) the terms of office of members of the committee;
 - 15 (c) termination of membership of the committee;
 - 16 (d) committee proceedings and procedure;
 - 17 (e) without limiting paragraph (d) —
 - 18 (i) the appointment of a chairperson;
 - 19 (ii) voting procedures; and
 - 20 (iii) the quorum of the committee; and
 - 21 (f) such transitional arrangements as the Council of Ministers
 22 considers necessary or expedient.
- 23 (3) The Council of Ministers shall appoint the members of the
 24 planning committee.
- 25 (4) Schedule 2 to the *Government Departments Act 1987* applies to the
 26 planning committee as it applies to a Department and accordingly
 27 references in that Schedule to a Department shall be read as
 28 including a reference to the planning committee.
- 29 (5) This subsection applies to any function —
- 30 (a) performed by the old planning committee and specified in
 31 the constitution order;
 - 32 (b) which the Minister authorises the planning committee to
 33 exercise under section 3 of the *Government Departments Act*
 34 *1987*; or
 - 35 (c) which is transferred to the planning committee by an order
 36 under Schedule 2 to the *Government Departments Act 1987*.
- 37 (6) The Council of Ministers shall arrange for the publication of an
 38 authorisation referred to in subsection (5)(b) in a manner the

1 Council considers will bring it to the attention of those likely to be
2 affected by it.

3 **39D Powers to delegate not affected**

4 To avoid doubt section 39C does not prevent —

- 5 (a) the appointment of a deputy, in accordance with section 80
6 of the *Interpretation Act 2015*, to perform any planning
7 functions of the Minister instead of the planning
8 committee; or
9 (b) the authorisation under section 3 of the *Government
10 Departments Act 1987* of a person other than the planning
11 committee to exercise any function of the Department.

12 **39E Old planning committee taken to be planning committee**

- 13 (1) From the commencement of this Part, until an order is made
14 under section 39C(1), the old planning committee is taken to be
15 the planning committee.
16 (2) A person who immediately before the commencement of this Part
17 was appointed to the old planning committee is to be treated as
18 having been appointed to the planning committee on the same
19 terms and conditions as applied immediately before that
20 commencement.
21 (3) This section does not prevent the terms and conditions being
22 varied after that commencement.
23 (4) A reference in any enactment or document in force or created
24 before the commencement of this Part to the old planning
25 committee is to be taken to be a reference to the planning
26 committee.

27 **39F Transitional provision about existing applications**

- 28 (1) This section applies if —
29 (a) an application under this Act was made before the
30 commencement of this Part; and
31 (b) the application is to be determined by the old planning
32 committee.
33 (2) The application shall, on or after commencement of this Part, be
34 determined by the planning committee in the same way as it
35 would have been determined by the old planning committee.

1 **39G Transitional provision about existing consents and**
 2 **determinations**

3 On and after the commencement of this Part, a planning approval,
 4 consent or other determination under this Act given by the old planning
 5 committee continues to have effect as if it had been given by the
 6 planning committee.”

7 **14 Section 45 amended – planning authority and planning committee**

8 (1) Section 45 (interpretation) is amended as follows.

9 (2) In subsection (1), after the definition of “planning approval” insert –

10 “**“planning authority”** has the meaning given by subsection (3);

11 **“planning committee”** means the committee constituted under section
 12 39C;”.

13 (3) After subsection (2) insert –

14 “(3) A reference in a public document to a “planning authority” is a
 15 reference to any person responsible for determining an
 16 application for planning approval, giving a consent or otherwise
 17 making a determination in relation to a matter under this Act or
 18 an enactment that relates to town and country planning.

19 Here “person” includes the planning committee constituted under
 20 section 39C(1).”.

21 **DIVISION 6 – OUTSIDE ORGANISATIONS**

22 **15 Section 40 amended**

23 In section 40 (involvement of outside organisations in planning) –

24 (a) in subsection (1), for “Council of Ministers shall”, substitute
 25 “Council of Ministers may”; and

26 (b) in subsection (2), for “Cabinet Office must”, substitute “Cabinet
 27 Office may”.

28 **DIVISION 7 – GENERAL IMPORTANCE**

29 **16 Section 45 amended – general importance**

30 After the definition of “erection” in section 45(1) (interpretation), insert –

31 **““general importance”** has the meaning given in section 45A (general
 32 importance;”.

17 **Section 45A — inserted**

After section 45 (interpretation), insert —

“45A General importance

- (1) In this Act a consideration or matter is of “general importance” if each of the following paragraphs applies —
- (a) subject to subsection (2) this paragraph applies to a consideration or matter which does not accord with the use for which the land is zoned as specified in —
- (i) the relevant area plan;
- (ii) the relevant local plan; or
- (iii) Isle of Man Planning Scheme (Development Plan) Order 1982¹;
- (b) this paragraph applies to a consideration or matter which relates to —
- (i) in the case of a commercial development, a site of 1,000 square metres or more;
- (ii) in the case of a residential development, a development of more than 30 homes; or
- (iii) in any other case, a development site of more than one hectare; and
- (c) this paragraph applies to a consideration or matter for which an environmental impact assessment is required under —
- (i) any enactment;
- (ii) a development plan;
- (iii) a national policy directive; or
- (iv) a planning policy statement.
- (2) A consideration or matter to which subsection (1)(a) applies, in respect of which there is a relevant national policy directive, is not a consideration or matter of general importance.
- (3) The Council of Ministers may issue guidance about the meanings of any of the terms in subsection (1).
- (4) Regard must be had to any guidance issued under subsection (3) in interpreting references to those terms.
- (5) The Council of Ministers may revise guidance issued under subsection (3) and a reference to guidance includes a reference to revised guidance.

¹ GC140/82

- 1 (6) Guidance issued under subsection (3) must be published by the
2 Council of Ministers in a manner the Council considers will bring
3 it to the attention of those likely to be affected by it.
- 4 (7) The Council of Ministers may by order —
- 5 (a) amend subsection (1);
- 6 (b) make further provision, or amend or repeal existing
7 provision, about a consideration or matter which is, and is
8 not, within subsection (1).
- 9 (8) An order under subsection (7) may amend this Act.”

PART 3 — GENERAL

18 Consequential amendments

12 In section 44 of the *Town and Country Planning Act 1999* (Tynwald control of
13 orders and regulations) —

- 14 (a) for subsection (1), substitute —
- 15 “(1) Development orders, orders under sections 2A, 6(3)(e) or (f),
16 45A(7) and regulations under this Act may not come into
17 operation unless they are approved by Tynwald.”; and
- 18 (b) in subsection (2), after “A development procedure order”, insert
19 “and an order made under section 39C(1)”.

IN THE KEYS

**TOWN AND COUNTRY PLANNING (AMENDMENT)
BILL 2019**

A **BILL** to amend the Town and Country Planning Act 1999 to make provision for national policy directives; to clarify the matters for which provision may be made in a development procedure order; to clarify the circumstances in which an application for planning approval may be referred to the Council of Ministers; to provide an enabling power for a community infrastructure levy; to provide for the constitution of the planning committee; to amend section 40 of that Act; to define general importance; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR THOMAS

MARCH 2019

Published by Authority