



Town & Country Planning (Amendment) Bill 2019

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill in the House of Keys, the Hon. Chris Thomas, MHK.

INTRODUCTION

1. These explanatory notes relate to the *Town & Country Planning (Amendment) Bill 2019* (hereinafter called "the Bill"). These explanatory notes have been prepared by the Cabinet Office in order to assist readers of the Bill, but they do not form any 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.
3. In the opinion of the Member moving the Bill, the provisions of the Bill are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.
4. 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.
5. An Impact Assessment was prepared and in the opinion of the Member moving the Bill, the balance between the benefit and any costs is the right one in the circumstances.

BACKGROUND

1. A general consultation for matters pertaining to land use planning was conducted at the end of 2017, with an online survey available from the 20th of Oct 2017 to the 8 Jan 2018.¹
2. In response to this, the Council of Ministers adopted an *Action Plan for Reform of the Planning System* which was laid before Tynwald in May 2018.²
3. One of the actions in that statement on Reform of the Planning System was to bring forward amendments to the *Town and Country Planning Act 1999* ("the Act"). This action is delivered by the Bill.
4. The draft Bill was made available to the public in a consultation which ran from the 3rd of Sep 2018 to the 31 Oct 2018³. A summary of the consultation responses is available and all responses for which permission was received to publish have also been published.⁴

¹ Consultation can be found here <https://consult.gov.im/environment-food-and-agriculture/improve-the-planning-system/>

² This is available from <https://www.gov.im/news/2018/may/03/action-plan-to-modernise-the-islands-planning-system/>

5. The Bill has been subject to public consultation and has been updated to take account of comments raised.
6. The significant changes are described in the appendix to these explanatory notes.

OVERVIEW

1. The purposes of the Bill are to:
 - amend the Act to make a new provision for National Policy Directives and regulations pertaining thereto;
 - clarify that development procedure orders may provide for making minor changes to planning approvals, the procedure for assessing such changes and the applicability and type of fees for such application;
 - set out circumstances wherein applications for planning approval may be referred to the Council of Ministers;
 - provide the power for a community infrastructure levy and regulations pertaining thereto;
 - bring the references to constituting the planning committee into the Act;
 - amend section 40 of the Act to remove the obligation to have involvement of outside organisations and replace it with an option to do so;
 - introduce a definition of the term general importance; and
 - related amendments for transition and consequential amendments.
2. The Bill consists of eighteen (18) clauses.
3. Clauses 1 and 2 are introductory and provide for commencement arrangements.
4. Clauses 3 to 8 deal with national policy directives.
5. Clause 9 clarifies that a development procedure order may provide for existing valid planning approvals to be amended for minor changes. This clause also deals with the administration of such (process, fees, etc.)
6. Clauses 10 deals with referrals of certain planning applications to the Council of Ministers.
7. Clauses 11 and 12 deal with a Community Infrastructure Levy, regulations relating to that levy to be made, and introduce a definition of the levy.
8. Clauses 13 and 14 insert a new part 4A into the Act relating to the planning committee. Transitional arrangements are also made.
9. Clause 14 also inserts definitions of the planning committee and a planning authority.

³ This consultation is available from <https://consult.gov.im/cabinet-office/amend-town-and-country-planning-act/>

⁴ The consultation response document is available at <https://consult.gov.im/cabinet-office/amend-town-and-country-planning-act/results/towncountryplanningamendmentbill2018-consultationsummaryreport.pdf>

10. Clause 15 amends the existing obligation to establish a consultative body for the involvement of outside organisations in planning so as to be a discretionary power.
11. Clause 16 inserts a definition of general importance.
12. Clause 17 inserts a new section 45A into the Act and empowers the Council of Ministers to issue guidance about the meaning of any terms in that section. Provision is also made for the Council of Ministers to, by order, make amendments to section 45A(1).
13. Clause 18 makes consequential amendments to section 44 of the Act (Tynwald control of orders and regulations).

NOTES ON CLAUSES

Clause 1

14. Clause 1 gives the short title of the resulting Act if the Bill is passed.

Clause 2

15. Clause 2 provides for commencement of the Bill. Provisions will be brought into operation by one or more Appointed Day Orders made by the Council of Ministers. Such orders can make consequential, incidental, supplementary, transitional, transitory or saving provisions as are necessary or expedient in connection with the coming into operation of any provision of the Bill.

Clause 3

16. Clause 3 states that the clauses following clause 3 amend the Act.

Clause 4

17. Clause 4 adds references to national policy directives into section 2(2A) and inserts a new clause 2(2B) into the Act, which requires the Cabinet Office at certain times to recommend to the Council of Ministers that a national policy directive remains in operation or is revoked.

Clause 5

18. This clause inserts a new section 2A into the Act, which creates a power for the Council of Ministers, by order, to issue a national policy directive, and contains provisions related thereto.
19. The related provisions deal with consultation, the making of regulations, what to do in the event of inconsistencies and ancillary matters.

Clause 6

20. Clause 6 adds reference to a national policy directive as a matter for which a person aggrieved may apply to the High Court for review under the procedure specified in section 5 of the Act.

Clause 7

21. Clause 7 inserts a reference to national policy directives into section 10(4) of the Act which specifies the matters to which regard must be had when determining applications for planning permission.

Clause 8

22. Clause 8 inserts a definition of national policy directive into section 45 of the Act.

Clause 9

23. Clause 9 amends section 10 of the Act so as to include express reference to the power to include provision in a development procedure order for the granting of minor changes to an already issued and valid planning approval.

24. This clause also provides for procedures and orders to be made in relation to such minor changes such as the determination process and applicability of fees.

Clause 10

25. Clause 10 deals with the referral of applications for planning approval to the Council of Ministers.

26. The clause sets out a test for identification of applications to be referred and also incorporates reference to matters of general importance, which is itself dealt with in Clause 17 of the Bill.

Clause 11

27. Clause 11 inserts a new section 13A into the Act.

28. The inserted section 13A creates:-

- a. the power for the Council of Ministers to make a Community Infrastructure Levy, subject to the concurrence of the Treasury;
- b. the power to make regulations pertaining thereto and the content of same, and
- c. the ability to make delegation in relation to the levy.

Clause 12

29. Clause 12 makes amendments to section 45 of the Act by inserting a definition of Community Infrastructure Levy.

Clause 13

30. Clause 13 amends the Act by inserting a new Part 4A into the Act which relates to the Planning Committee.

31. Clause 13 achieves the following:-

- a. creates definitions of the planning committee for the purposes of sections 39C to 39G of the Act;
- b. creates a definition of the *old planning committee* for sake of clarity;
- c. creates an obligation for the Council of Ministers, by order, to constitute the planning committee and sets out the parameters of such an order, together with the necessary references to the *Government Departments Act 1987*;
- d. states that, for avoidance of any doubt, that powers to delegate are not affected;
- e. states that the *old planning committee* is taken to be the planning committee; and

- f. makes transitional arrangements for dealing with applications for planning approval which are underway at commencement and for those which are existing consents and determinations.

Clause 14

32. Clause 14 amends section 45 of the Act to insert definitions for *planning authority* and *planning committee*.

Clause 15

33. Clause 15 changes the current obligation for the Council of Ministers to create a body for the involvement of outside organisations in planning, so as to make it a discretionary power to do so.

Clause 16

34. Clause 16 relates to *general importance*. It amends section 45 of the Act (interpretation) by inserting a definition of the term.

Clause 17

35. Clause 17 inserts a new section 45A General importance into the Act which provides for:-
 - a. The conditions, all of which must be satisfied, to determine what is of general importance;
 - b. the Council of Ministers to issue guidance about the meanings set out in the new section 45A(1) concerning general importance;
 - c. any guidance issued to be given regard when interpreting the items in new section 45A(1);
 - d. the Council of Ministers to revise any guidance issued;
 - e. any guidance issued to be published in a manner which will bring it to the attention of any parties likely to be affected by it; and
 - f. the Council of Ministers, by order, to amend the new section 45A(1).

Clause 18

36. Clause 18 makes consequential amendments to section 44 of the Act (Tynwald control of orders and regulations).

Appendix

Summary of Amendments made to the Town & Country Planning (Amendment) Bill 2019 since it was published for consultation

Section 2: Development Plan <i>(changes to new section on National Policy Directives)</i>	Insertion of 2A (2), and 2A (3) to cover consultation on NPDs and the period that NPDs shall have effect.
Section 5: Validity of Plans <i>(not included in the Bill published for consultation)</i>	Amended and additional text in 5 (1), 5 (2), 5 (3) and 5 (4) to include references to National Policy Directives
Section 10: Determination of planning applications	Insertion of 10 (6A) on development procedure orders
Section 13A: After agreements regulating development of land <i>(change to new section on CIL)</i>	Additional text in 13A (1) on Treasury concurrence and 13A (4) on matters in respect of which a Community Infrastructure Levy may be charged
Section 39D Definitions for Sections 39E to 39G	Amended and additional text in definition for existing planning committee
Section 45A: Interpretation <i>(Change to new section 45A)</i>	Amended text in 45A (1) and 45A (3) for clarification Additional text in 45A (1a), 45 (1b) and 45 (1c) for clarification