

4. BILL FOR SECOND READING

**4.1. Property Service Charges (Amendment) Bill 2019 –
Second Reading approved**

Mr Harmer to move:

That the Property Service Charges (Amendment) Bill 2019 be read a second time.

The Speaker: Item 4, Bill for Second Reading, Property Service Charges (Amendment) Bill 2019, and I call on Mr Harmer to move.

Mr Harmer: Thank you, Mr Speaker.

I am pleased to promote this short Bill on behalf of the Department of Infrastructure to respond to a recommendation of Tynwald of 12th April 2011.

In terms of background, Mr Speaker, 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.

A Select Committee was appointed to consider the Petition and a report and recommendations were subsequently published.

The Select Committee considered that an extension of the Property Services Charges Act 1989 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 made up a service charge, would be beneficial. In making this decision the Committee recognised this would not resolve the issues as presented by the Petitioners.

This Bill seeks to implement that recommendation by enabling the Department to apply, by order, the Property Services Charges Act 1989 to the owners of freehold dwellings who are legally obliged to pay a service charge throughout the possession of the freehold. This may, amongst other things, enable such persons to apply to the Isle of Man Rent and Rating Appeal Commissioners for determination on the reasonableness of the service charge as the tenants of the dwelling may already do under the Act.

Having outlined the broad principles of the Bill, I hope the Hon. Members will now give their full support.

I beg to move the Bill for Second Reading: that the Property Service Charges (Amendment) Bill 2019 be read for a second time.

The Speaker: Hon. Member for Onchan, Ms Edge.

Ms Edge: I beg to second and reserve my remarks.

The Speaker: Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

It seems the intention of the Select Committee and of Tynwald in 2011 was to extend the Property Service Charges Act to freehold properties who had to pay service charges. Now, the amendment in this Bill does not actually do that, let's be clear. What the Bill does is it gives the Department the power to extend the Bill to someone else, so it is sort of a middle step, which is not the same thing at all.

There is a lot of risk, I think, with handing a Department this power when it is something that is quite straightforward. What are the chances the Department makes a mistake in its secondary

legislation and specifies the wrong people or specifies not a broad enough class of properties? If they decide to specify specific properties, what if somebody builds a new one that is not then included in that list of specified properties? The whole thing starts to spiral.

So I think the Minister needs to explain to this Hon. House why the Department has taken this approach, instead of simply amending the Property Service Charges Bill to make the relevant parts applicable to freeholders, which on the face of it would seem to be a much simpler approach.

It seems that one of the sections in this Bill, notably part (1)(b) of section 12B that is being added, would be entirely sufficient if that were simply included in the Bill with a reference as to which parts of that Bill would apply. It seems to do the job, unless I am missing something here.

I would like to know from the Minister why he has decided to take this overly complicated approach of inserting new powers and then having to come back with more secondary legislation rather than just making a straightforward change to the Bill.

It has taken about eight years now for the Department to act on a relatively straightforward Tynwald resolution and the action that he has decided to take is to simply add a power to bring some more legislation forward in the future. So we could be waiting another eight years before the Department decides to bring forward a piece of secondary law to make this actually work.

My last concern with this approach is the rest of the PSC is not an enabling Bill, so this new provision is entirely out of keeping with the rest of the Bill, which is quite a detailed Bill in and of itself.

So, Minister, could you please provide some clarity and an explanation as to why you are taking this approach, rather than simply amending the Property Service Charges Act as it exists.

The Speaker: I call on the Minister to reply.

The Minister: Thank you.

Of course, the main issue is that the Bill provides the ability to provide a Tynwald order which will then give Tynwald and the other place an opportunity to decide that. Also, the order would go out to proper consultation to ensure that it covers everything we need to do. Obviously, there is a range of different types of circumstances, so we need to have that flexibility within the Tynwald order, and that is the reason.

So with that, I beg to move.

The Speaker: Hon. Members, I put the question that the Property Service Charge (Amendment) Bill 2019 be read for a second time. Those in favour, please say aye; against, no.

A division was called for and electronic voting resulted as follows:

FOR

Mr Ashford
Mr Baker
Miss Bettison
Mr Cannan
Mrs Corlett
Mr Cregeen
Ms Edge
Mr Harmer
Mr Malarkey
Mr Moorhouse
Mr Peake
Mr Quayle
Mr Skelly
Mr Speaker
Mr Thomas

AGAINST

Mrs Beecroft
Mrs Caine
Mr Callister
Mr Hooper
Mr Robertshaw

The Speaker: Fifteen for, 5 against. The ayes have it. The ayes have it.

Hon. Members, that completes the business on the Order Paper today. The House will stand adjourned until 10.30 a.m. on 16th July in Tynwald Court.

The House adjourned at 10.50 a.m.