

**5.3. Property Service Charges (Amendment) Bill –
Clauses considered**

Mr Harmer to move.

The Speaker: Item 5.3 is the Property Service Charges (Amendment) Bill, in the name of Mr Harmer.

Mr Harmer: Thank you, Mr Speaker.

First, I would like to thank Members for supporting this Bill at the Second Reading, back in June of this year.

I will first move to clause 1. Clause 1 is the title. This clause gives the Act resulting from the Bill a short title.

Mr Speaker, I beg to move that clause 1 stand part of the Bill.

The Speaker: Ms Edge.

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

The Speaker: I put the question that clause 1 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mr Harmer.

Mr Harmer: Clause 2 introduces the amendments that are made by the Property Service Charges Act 1989 by clauses 3 and 4.

Mr Speaker, I beg to move that clause 2 stand part of the Bill.

The Speaker: Ms Edge.

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

The Speaker: I put the question that clause 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Harmer.

Mr Harmer: Clause 3 amends the long title of the Act to allow the Act to cover service charges payable by owners of freehold dwellings in specified circumstances.

Mr Speaker, I beg to move that clause 3 stand part of the Bill.

The Speaker: Ms Edge.

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

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I think the Minister probably knows the question I am going to ask him here. This is about the definition of a landlord that is being inserted in this clause. It seems to me that this is a different definition than is already inside the Property Service Charge Act itself.

The Speaker: Mr Hooper, we are not on clause 4, we are on clause 3.

Mr Hooper: I am a step ahead, Mr Speaker. I apologise.

The Speaker: Okay.

Mr Harmer: We are forewarned! *(Laughter)*

The Speaker: I was not sure if the Member was just testing me to make sure I was keeping up with things as well.

If there are no other comments on the long title amended, then we will deal with clause 3. Those in favour of clause 3, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Mr Harmer.

Mr Harmer: Clause 4 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 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. An order made under the new section 12B requires Tynwald approval.

During the Second Reading I was asked why we were taking this approach, rather than making a straightforward change to the Act. Unfortunately, it is not as simple as that. The contractual arrangements which this amendment will cover are extremely unusual in relation to freehold properties on the Island. The Department is not in a position to specify which parts of the Property Service Charge Act should apply to such a contractual arrangement, as the Department is not aware of any such arrangements that currently exist. Therefore, in order to ensure that application of the Act to freehold properties works as intended in practice, an enabling provision has been drafted to give the Department flexibility to cover such relevant circumstances as they may arise. The order will go out for proper consultation to ensure that it covers everything that it needs to cover.

Mr Speaker, I beg to move that clause 4 stand part of the Bill.

The Speaker: Ms Edge.

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

The Speaker: Mr Hooper.

Mr Hooper Thank you, Mr Speaker. I will try and get this in the right place this time.

The first question I have for the Minister is about the new definition that is being inserted. The current Act says that a person who has a services charge, as is defined as something that is payable to someone who has the right to enforce payment of a service charge ... That is how they define a landlord in the original Act. The definition of a landlord in this Act is someone to whom a service charge is payable. I did ask the Department this question before, but I have not really got an answer as to what is the difference between someone who has the right to enforce payment and someone to whom a charge is payable, because they are different wordings. I am assuming it covers different people and I would just like to understand why we are covering different people, if indeed that is the case. Is there a difference between the person with the right to enforce and the person to whom a charge is payable? My concern is it might be that a landlord or his agent have the right to enforce payment, whereas payment may only be payable to one of those parties. I am just concerned you might be restricting unduly the definition of a landlord.

My second question is about the process by which the Department is going to make these orders to apply to specific properties. I suspect that will be on application from individuals, so if someone thinks that their property should be covered by the Act they will get in touch with the Department and say, 'Please can you pass an order to make our particular property covered by the Act in whatever circumstances are relevant?' I just wanted to get some clarity on what the process for that will be, because there will have to be an operational process but I would just like to make sure there is enough publicity around it, where anyone who thinks they should be covered is able to apply to the Department.

The Speaker: Mover to reply.

Mr Harmer: Thank you; and I thank the Member for the correspondence we have had on this.

Obviously, in terms of consultation we would consult on any order that was needed. There is, as I have specified, no notification process in place, nor one proposed in the Bill, but it can be adequately managed within the Department's processes and obviously people can apply and will contact the Department in that case.

On the second point, the persons who are being paid are not landlords. The freeholders are potentially paying the service charge to a developer or management company to manage open spaces, unadopted roads and so forth. It is not unusual for there to be two different definitions within an Act. He has to remember that the existing Act is constructed around the landlord-tenant relationship, not the landlord-freeholder relationship. The definition in new section 12B is dealing with that relationship. That is why the new section 12B is clarifying that 'the landlord or superior landlord is to be taken as a person to whom a service charge is payable by the specified person' and that the specified person is as specified in an order under the new section 12B.

Obviously I will clarify any other further points in the Third Reading.

The Speaker: I put the question that clause 4 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.