



LOCAL GOVERNMENT (AMENDMENT) BILL 2021

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 T S Baker MHK

INTRODUCTION

1. These explanatory notes relate to the Local Government (Amendment) Bill 2021. 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. The primary purpose of the Bill is to facilitate the implementation of a number of recommendations of a Select Committee of Tynwald (Select Committee of Tynwald on Local Authorities: Members' Interests (petition for redress)) by amending the Local Government Act 1985 ("1985 Act").
4. The Bill also updates the provisions of the 1985 Act relating to Joint Boards and some minor amendments to other local government legislation such as the Local Government (Miscellaneous Provisions) Act 1984.
5. In summary the Bill proposes —
 - a. provisions that will implement the legislative recommendations of the Select Committee of Tynwald on Local Authorities: Members' interests;
 - b. the introduction of some new provisions (in section 7 of the 1985 Act) which will augment the express primary legislative power under which the Department makes Joint Board Orders;
 - c. the clarification of the obligations under the 1985 Act that apply to Joint Boards;

- d. the application of various provisions to Joint Boards and Joint Committees;
- e. the repeal the Douglas Market Act 1956;
- f. updating the provisions relating to Member expenses/allowances;
- g. clarification of local authority boundaries;
- h. clarifying the process in relation to alterations of the number of local authority members and wards;
- i. amending Local Government Superannuation Scheme legislation;
- j. update provisions relating to the inspection of minutes of local authorities' and
- k. amending the Tynwald procedure for local authority Byelaws.

THE STRUCTURE OF THE BILL

6. The Bill contains 51 clauses and 4 schedules.

Clause 1: Title

7. This clause gives the short title of the Act resulting from the Bill.

Clause 2: Commencement

8. This clause makes provision for a number of provisions to come into operation on the announcement of Royal Assent, whilst the remaining provisions will come into operation by an appointed day order.

Clause 3: Amendments to the Local Government Act 1985

9. This clause introduces the amendments to the 1985 Act.

Clause 4: Inquiries, reports and returns – section 4 amended

10. This clause amends section 4 of the 1985 Act so as to include the ability for a relevant Department (Department of Environment, Food and Agriculture, the Department of Infrastructure and the Department of Health and Social Care) to hold an inquiry in relation to the functions of a joint board and to insert provisions regarding the conduct of such an inquiry, including the requirement for a panel and independent chairperson (appointed by the Governor) and the application of the Inquiries Evidence Act 2003.

Clause 5: Boundaries – section 5A inserted

11. This clause inserts a new section 5A into the 1985 Act, by subsection (1) of which the boundaries of each of the districts is specified by reference to maps

to be deposited at the Tynwald Library and makes provision for the amendment of subsection (1) by order, subject to Tynwald approval.

Clause 6: Alteration to boundaries – section 6 amended

12. This clause amends section 6 of the 1985 Act to insert a power for the Department of Infrastructure to make regulations in relation to the process by which a local authority may apply to alter its district boundaries. Section 71(2) applies and specifies that such regulations require Tynwald approval.

Clause 7: Merger of local authorities – section 6A amended

13. This clause amends section 6A of the 1985 Act to add reference to amending a district boundary map (under new section 5A) to the matters for which an order merging local authorities may provide.

Clause 8: Establishment of joint boards – section 7 amended

14. This clause substitutes section 7(3) of the 1985 Act which included the matters for which an order establishing a joint board may provide. The substituting subsection introduces new Schedule A1 which specifies the various matters which must and may be provided for in such an order.

Clause 9: Division of district into wards, etc – section 9 amended

15. This clause amends section 9 of the 1985 Act so as to standardise the process by which a local authority may make a scheme in relation to its district and the process by which the Department of Infrastructure may make an order to give effect to such a scheme. The amendments also insert regulation-making powers by which the Department may make provision in relation to a local authority scheme and a Department order made under section 9. Section 71(2) applies and specifies that such regulations require Tynwald approval. The amendments made by clause 9 replace the obligation for the Department to hold an inquiry before making an order under section 9, with a discretionary power.

Clause 10: Insertion of division heading before section 10

16. This clause inserts a division heading before section 10 (proceedings and allowances) of the 1985 Act.

Clause 11: Repeal of sections 11 to 15 and insertion of new section 15A to 15H

17. This clause repeals sections 11 to 15 of the 1985 Act and inserts sections 15A to 15H (derived from sections 27 to 34 of the Localism Act 2011 (of Parliament)).
 - a. New section 15A imposes a duty on every local authority to promote and maintain high standards of conduct, in particular the adoption of a code of conduct.

- b. New section 15B makes provision regarding such codes of conduct, including a requirement that a code is consistent with the “Nolan Principles” and in particular that a code must provide for the registration of interests and make provision with regard to a failure to comply with the provisions of a code and the investigations of such allegations.
- c. New section 15C makes provision for the register of members’ interests which must be established by a local authority.
- d. New section 15D makes provision for and defines “disclosable relevant interests”, which are to be disclosed on taking office.
- e. New section 15E makes provision for the disclosure by a local authority member, of a disclosable relevant interest which has not yet been entered into the authority’s register.
- f. New section 15F makes provision regarding interests which may or may not be disclosable, but which are sensitive and the disclosure of which may expose the member or a person connected with the member, to violence or intimidation.
- g. New section 15G provides that on a written application from the clerk, in specified circumstances, a local authority may issue a dispensation from the restrictions on participation and voting on a matter in which the member has a disclosable relevant interest.
- h. New section 15H specifies the provisions in sections 15A to 15G which, if breached, constitute a criminal offence for which the maximum penalty (on summary prosecution) is a fine of level 4 on the standard scale, but also that, subject to time limits, a court may disqualify a person from being a local authority member. Any prosecution may only be brought by or on behalf of the Attorney General.

Clause 12: Arrangements for discharge of functions by committees, etc – section 17 amended

- 18. This clause amends section 17(2) of the 1985 Act to correct a grammatical error.

Clause 13: Arrangements for discharge of functions – supplemental – section 17A inserted

- 19. This clause inserts a new section 17A (Arrangements for discharge of functions – supplemental) into the 1985 Act by which, where a local authority makes arrangements for its functions to be exercised by a committee or sub-committee, 2 or more local authorities or an officer to whom the functions are delegated, references to the local authority in relation to those functions, are to be construed as references to the body, bodies or person exercising the function.

Clause 14: Disqualification for membership of committees and disabilities for voting – section 20 amended

- 20. This clause amends section 20(2) (disqualification for membership of committees and disabilities for voting) of the 1985 Act. The amendments are

consequential, due to the repeal of sections 11 to 14 and the insertion of section 15A to 15H.

Clause 15: Disclosure by officers of interest in contracts – Section 23 amended

21. This clause amends section 23 (disclosure by officers of interest in contracts) of the 1985 Act. The amendments are consequential due to the repeal of sections 11 to 14 and the insertion of section 15A to 15H.

Clause 16: Standing orders – section 27 amended

22. This clause amends section 27 (standing orders) of the 1985 Act so as to substitute “relevant interest” for a reference to pecuniary interests and inserts a requirement for local authorities to consult the Department of Infrastructure before making standing orders under that section.

Clause 17: Substitution of cross heading before section 28

23. This clause substitutes the cross heading before section 28 (byelaws for good rule and government, etc).

Clause 18: Making of byelaws by Department – section 29 amended

24. This clause amends section 29 (making of byelaws by Department) of the 1985 Act by setting out that byelaws made by the Department require Tynwald approval.

Clause 19: Procedure, etc for byelaws – section 30 amended

25. This clause substitutes sections 30(4), (5) and (6) (procedure, etc for byelaws) of the 1985 Act, so as to require any Byelaws made by a local authority to be approved by the Department and be laid before Tynwald.

Clause 20: Substitution of cross heading before section 31

26. This clause substitutes the cross heading before section 31 (notices, etc) of the 1985 Act.

Clause 21: Public notices – section 32 substituted

27. This clause amends section 32 of the 1985 Act (as it will by the time the resulting act comes into operation, have been amended by the Elections and Meetings (Local Authorities) Act 2021) so as to clarify the methods by which public notices may be served and documents made available for copying or inspection by a local authority.

Clause 22: Inspection of minutes – section 34 substituted

28. This clause substitutes section 34 (inspection of minutes) of the 1985 Act and for the existing provisions which relate to the inspection of documents,

substitutes Schedule 3A which provides for access to the meetings and to the documents of a local authority.

Clause 23: Substitution of cross heading before section 35

29. This clause substitutes the cross heading before section 35 (powers to enter on land) of the 1985 Act.

Clause 24: Substitution of cross heading before section 38

30. This clause substitutes the cross heading before section 38 (power to execute works on behalf of owners) of the 1985 Act.

Clause 25: Application to joint boards – section 68 and Schedule 3 repealed

31. This clause repeals section 68 and Schedule 3 on the date on which section 25 and Schedule A1 of the resulting Act come into operation and makes provision for joint boards which exist on the date on which the repeals take effect.

Clause 26: Interpretation – section 72 amended

32. This clause amends section 72 (interpretation) of the 1985 Act so as in subsection (1) to substitute the definitions of chairman and member and to insert definitions of clerk, co-opted member, Corporation and substitute member and provides that the subsection (1) may be amended by order, subject Tynwald approval.

Clause 27: Insertion of new Schedule A1

33. This clause inserts new Schedule A1 into the 1985 Act as set out in Schedule 1 of this Bill. Schedule A1 is introduced in amended section 7 of the 1985 Act (see clause 7).

Clause 28: Meetings and proceedings of local authorities – Schedule 1 amended

34. This clause amends Schedule 1 to the 1985 Act by inserting a new subparagraph 4(6) which provides that notice of a meeting may be served on a member by electronic means and amends paragraph 9 of that Schedule so as to provide for the signing and storing of minutes from a meeting at which members attend remotely.

Clause 29: Attendance and travelling allowance – Schedule 2 substituted

35. This clause substitutes Schedule 2 (attendance and travelling allowance) to the 1985 Act with the Schedule set out in Schedule 2 to this Bill and replaces the existing provisions regarding travel and attendance allowances, with general allowance provisions derived from section 18 of the Local Government and Housing Act 1989 (of Parliament), which provide that the Department of Infrastructure may make regulations authorising or requiring local authorities to make schemes for the payment of allowances to its members. Section 71(2) applies and specifies that such regulations require Tynwald approval.

Clause 30: Insertion of new Schedule 3A

36. This clause inserts a new Schedule 3A, as set out in Schedule 3 of the Bill into 1985 Act, which is introduced by amended section 34 of the 1985 Act (see clause 22).

Clause 31: Transitional arrangements – Schedule 4 amended

37. This clause amends paragraph 4 of Schedule 4 (Transitional arrangements) to the 1985 Act and the references to the provisions which do not apply to certain local authority minutes.

Clause 32: Local Government (Miscellaneous Provisions) Act 1984 amended

38. This clause amends section 12(1)(a) (vesting of open space in local authority) of the Local Government Act (Miscellaneous Provisions) 1984 ("1984 Act") by omitting "pursuant to a development order" from the provision.
39. The clause also inserts a new section 12A in the 1984 Act. The new section makes provision for the disposal of land which has been dedicated as, or vested in, a local authority as open space. The section is derived from section 123 of the Local Government Act 1972 (of Parliament) and provides that, subject to a requirement to serve public notice in accordance with regulations to be made by the Department, a local authority may (i) grant a short tenancy (of less than 7 years) for the best consideration that can reasonably be obtained, (ii) with the consent of the Department, grant a medium tenancy (7 to 21 years), for the best consideration that can reasonably be obtained or (iii) with the consent of Tynwald, dispose of the open space by way of a disposal other than a short tenancy or a medium tenancy. The provision also inserts a definition of open space into the 1984 Act.

Clause 33: Public Sector Pensions Act 2011 amended

40. This clause amends section 6(1) (functions of the PSPA) and substitutes section 17(3) (transitional provisions, amendments, and repeals) of the Public Sector Pensions Act 2011 to add to the matters for which the Public Sector Pensions Authority has the vires. The additional function is the provision of assistance to the Department of Infrastructure, in relation to a pension scheme to which section 8 of the Superannuation Act 1984 applies, for which, subject to consulting the Scheme administrator, the Authority may recover its reasonable costs, where the provisions of any such Scheme allow for administration and maintenance expenses to be paid out of the Scheme. (Despite the repeal of the Superannuation Act 1984, certain provisions by which the Department of Infrastructure may make schemes for the payment of superannuation were saved.) The clause also amends the transitional provisions in the 2011 Act as they apply to those saved provisions of the Superannuation Act 1984.

Clause 34: Elections (Keys and Local Authorities) Act 2020

41. This clause amends the Elections (Keys and Local Authorities) Act 2020 so as to include provision for remote attendance at local authority meetings, in terms

which are consistent with those included in the Elections and Meetings (Local Authorities) Act 2021.

Clause 35: Elections and Meetings (Local Authorities) Act 2021 amended

42. This clause amends section 19 of the Elections and Meetings (Local Authorities) Act 2021.

Clause 36: Douglas Cemetery Act 1895 amended

43. This clause amends section 27 (bye-laws) of the Douglas Cemetery Act 1895 by requiring byelaws to be made by the local authority to be approved by the Department and laid before Tynwald.

Clause 37: Pedlars and Street Traders Act 1906 amended

44. This clause amends section 24 (issue of licence by local authority) and substitutes section 30 (local authority may make bye-laws) of the Pedlars and Street Traders Act 1906 by requiring byelaws to be made by the local authority to be approved by the Department and laid before Tynwald.

Clause 38: Local Government Consolidation Act 1916

45. This clause inserts a new 315A (bye-laws: general) into the Local Government Consolidation Act 1916 by requiring byelaws to be made by the local authority to be approved by the Department and laid before Tynwald.

Clause 39: Local Government Amendment Act 1929

46. This clause inserts a provision that requires byelaws to be made by the local authority to be approved by the Department and laid before Tynwald.

Clause 40: Housing Act 1955 amended

47. This clause substitutes section 48(2) and (3) (byelaw for regulation of local authority's houses) of the Housing Act 1955. Subsection (2) clarifies where penalties should be credited and subsection (3) clarifies the procedure for local authority and Department byelaws.

Clause 41: Local Government (Ferries) Act 1960 amended

48. This clause amends section 1 of the Local Government (Ferries) Act 1960 by requiring byelaws to be made by the local authority to be approved by the Department and laid before Tynwald.

Clause 42: Local Government Act 1963 amended

49. This clause amends section 25 (power to provide facilities and accommodation for travellers) of the Local Government Act 1963 by requiring byelaws to be made by the local authority to be approved by the Department and laid before Tynwald.

Clause 43: Ramsey Town Act 1970 amended

50. This clause amends section 5 (bye-laws) of the Ramsey Town Act 1970 by requiring byelaws to be made by the local authority to be approved by the Department and laid before Tynwald.

Clause 44: Local Government (Miscellaneous Provisions) Act 1984 amended

51. This clause amends section 11 (open spaces) power to provide facilities and accommodation for travellers) of the Local Government (Miscellaneous Provisions) 1984 by requiring byelaws to be made by the local authority to be approved by the Department and laid before Tynwald.

Clause 45: Sewerage Act 1999 amended

52. This clause amends section 36 (public lavatories) of the Sewerage Act 1999 by requiring byelaws to be made by the local authority to be approved by the Department and laid before Tynwald.

Clause 46: Douglas Market Act 1956 repealed

53. This clause repeals the Douglas Market Act 1956.

Clause 47: Housing (Miscellaneous Provisions) Act 1976 amended

54. This clause repeals the entry relating to section 48 of the Housing Act 1955 in Schedule 1 (exceptions and modifications of Part IV of the Act of 1955 in its application to housing provided by the Department) of the Housing (Miscellaneous Provisions) Act 1976.

Clause 48: Local Government (Miscellaneous Provisions) Act 1976 amended

55. This clause repeals the entry relating to the Douglas Market Act 1956 in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1976.

Clause 49: Fines Act 1986 amended

56. This clause repeals the entry relating to the Douglas Market Act 1956 in Schedule 1 to the Fines Act 1986.

Clause 50: Garff (Local Government District) Order amended

57. This clause amends Schedule 2 to the Garff (Local Government District) Order 2015 by substituting the map.

Clause 51: Repeals and Revocations

58. This clause repeals and revokes, in whole or in part, specified enactments as listed in the clause.

Schedule 1: New Schedule A1 to the Local Government Act 1985

59. This Schedule specifies the various matters which must and may be provided for in an order under section 7 of the 1985 Act.

Schedule 2: Substituted Schedule 2 to the Local Government Act 1985

60. This Schedule replaces the existing provisions regarding travel and attendance allowances, which general allowance provisions derived from section 18 of the Local Government and Housing Act 1989 (of Parliament), which provide that the Department of Infrastructure may make regulations authorising or requiring local authorities to make schemes for the payment of allowances to its members.

Schedule 3: New Schedule 3A to the Local Government Act 1985

61. This Schedule sets out the requirements relating to access to the meetings and to the documents of a local authority, which is to be inserted into the 1985 Act.

Schedule 4: Garff (Local Government District) Order 2015 amended

62. This Schedule substitutes the map in Schedule 2 to the Garff (Local District Government District) Order 2015.

HUMAN RIGHTS

63. 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

64. The resulting Act may have limited financial and human resource implications for local authorities related to the possible need to appoint an independent person for certain matters and in relation to the payment of the reasonable costs of the Public Sector Pensions Authority which are recoverable from the pension scheme where the scheme so allows.