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## TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2018

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CONSULTATION

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## TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2018

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.

**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:—

### PART 1 – INTRODUCTORY

#### 1 Short title

The short title of this Act is the Town and Country Planning (Amendment) Act 2018.

#### 2 Commencement

(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.

*Tynwald procedure – laying only.*

(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.

## 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 of such description as is specified in the order (“national policy directive”).
- (2) The Council of Ministers shall by regulations make further provision about the making of national policy directives under this section.
- (3) A national policy directive must give reasons for the policy set out in the directive.
- (4) The Council of Ministers must arrange for the publication of a national policy directive in a manner the Council considers will bring it to the attention of those likely to be affected by it.
- (5) In the event of any inconsistency between a national policy directive and the matters referred to in paragraphs (a), (b) and (c) of section 10(4) (determination of planning applications), the relevant provisions of the national policy directive shall prevail.».

**6 Section 10 amended**

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

«(ba) any relevant national policy directive under section 2A;».

**7 Section 45 amended**

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

«“national policy directive” means a national policy directive specified in an order under section 2A(1);».

## DIVISION 2 — DEVELOPMENT PROCEDURE ORDERS

**8 Section 10 amended**

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

« ; and

(f) the grant of minor changes to a planning approval and the procedure for the determination of applications for minor changes.».

## DIVISION 3 — REFERRAL OF APPLICATIONS TO THE COUNCIL OF MINISTERS

**9 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 subsection (1A) applies, it shall refer the application to the Council of Ministers and the Council may direct that the Council shall determine the application;

(b) it appears to the Council of Ministers that an application made to the Department for planning approval —

(i) is an application to which subsection (1A) applies; and

(ii) the application has not been referred to it under paragraph (a),

the Council of Ministers may direct that the application shall be referred to and determined by the Council.

(1A) This subsection applies to an application which appears to the Department or to the Council of Ministers, as the case may be, —

- (a) to raise considerations of general importance to the Island;  
or
- (b) that for some other reason ought not to be determined by the Department.».

#### DIVISION 4 – COMMUNITY INFRASTRUCTURE LEVY

### 10 Section 13A inserted

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

#### «13A Community infrastructure levy

P2008/29/205-223 and drafting

- (1) The Council of Ministers may make regulations providing for the imposition of a charge to be known as Community Infrastructure Levy (“CIL”).
- (2) The Council of Ministers may delegate to any member or officer of the Department, or any other person, its functions under this section.
- (3) A delegation by the Council of Ministers under subsection (2) may impose conditions with which a person exercising a function under the delegation must comply.
- (4) Regulations made under subsection (1) may include provision about procedures to be followed in connection with CIL.
- (5) Without limiting subsection (4), the regulations may make provision about –
  - (a) procedures to be followed by the Council in proposing to begin charging CIL;
  - (b) procedures to be followed by the Council in relation to charging CIL;
  - (c) procedures to be followed by the Council in proposing to stop charging CIL;
  - (d) consultation;
  - (e) the form and content of documents;
  - (f) setting rates or other criteria;
  - (g) the collection of CIL and provision for payment on account or by instalments;
  - (h) the repayment of CIL (with or without interest);
  - (i) the matters to which received CIL may be applied;

- (j) the terms and conditions of appointment and remuneration of independent persons in relation to charging, collecting or the enforcement of CIL;
  - (k) reimbursement of expenditure incurred by the Council (including provision for enforcement);
  - (l) combining procedures in connection with CIL with procedures for another purpose of the Council (including a purpose of the Council in another capacity);
  - (m) procedures to be followed in connection with actual or potential liability for CIL;
  - (n) procedure to be followed in respect of an exemption from CIL or a reduction of CIL;
  - (o) how the following powers are to be used, or are not to be used —
    - (i) section 13 (agreements regulating development of land); and
    - (ii) section 109A of the *Highways Act 1986* (execution of works);
  - (p) the exercise of any other power relating to planning or development;
  - (q) permit a person to exercise a discretion in respect of any matters specified in the regulations; and
  - (r) giving guidance by the Council about any matter connected with CIL;
  - (s) provide for their contravention to be an offence and prescribe a penalty on summary conviction —
    - (i) where the offence comprises a failure to pay CIL, not exceeding twice the amount of the CIL due; and
    - (ii) in any other case a fine not exceeding level 4 on the standard scale.
- (6) Without limiting subsection (4), CIL regulations may —
- (a) make provision that applies generally or only to specified cases, circumstances or areas;
  - (b) make different provision for different cases, circumstances or areas;
  - (c) provide, or allow a charging schedule to provide, for exceptions;
  - (d) confer, or allow a charging schedule to confer, a discretionary power on the Council or another specified person;
  - (e) apply an enactment, with or without modifications; and

- (f) make incidental, consequential, supplementary, transitional or transitory provision or savings (and incidental, supplemental or consequential provision may include provision disapplying, modifying the effect of or amending an enactment).».

#### DIVISION 5 – PLANNING COMMITTEE

### 11 Part 4A inserted

- (1) After Part 4 (enforcement of control) insert –

#### «PART 4A –THE PLANNING COMMITTEE

##### *Planning Committee*

#### 39B Planning committee

- (1) Subject to this section, the Council of Ministers must, by order (“the constitution order”), constitute a committee (the “planning committee”) to carry out any of the functions under this Act to which subsection (5) applies.
- (2) The constitution order may in particular provide for –
- (a) the constitution of the committee;
  - (b) the terms of office of members of the committee;
  - (c) termination of membership of the committee;
  - (d) committee proceedings and procedure;
  - (e) without limiting paragraph (d) –
    - (i) the appointment of a chairperson;
    - (ii) voting procedures; and
    - (iii) the quorum of the committee; and
  - (f) such transitional arrangements as the Council of Ministers considers necessary or expedient.
- (3) The Council of Ministers must appoint the members of the planning committee.
- (4) Schedule 2 to the *Government Departments Act 1987* applies to the planning committee as it applies to a Department and accordingly references in that Schedule to a Department shall be read as including a reference to the planning committee.
- (5) This subsection applies to any function –



- (a) which the Department has authorised the planning committee to exercise under section 3 of the *Government Departments Act 1987*; and
  - (b) which may be transferred to the planning committee by an order under Schedule 2 to the *Government Departments Act 1987*.
- (6) The Council of Ministers shall arrange for the publication of an authorisation of the Department referred to in subsection (5)(a) in a manner the Council considers will bring it to the attention of those likely to be affected by it.

### 39C Powers to delegate not affected

To avoid doubt section 39B does not prevent —

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

### 39D Definitions for sections 39E to 39G

In sections 39E to 39G —

“**existing planning committee**” means the body of persons known as the ‘Planning Committee’ to which the functions of the Department in determining applications for planning approval under this Act and any orders or regulations made under it were delegated immediately before the enactment of the *Town and Country Planning (Amendment) Act 2018*; and

“**new planning committee**” means the planning committee established under section 39B.

### 39E Existing planning committee taken to be new planning committee

- (1) From the commencement of this Part, until an order is made under section 39B(1), the existing planning committee is taken to be the new planning committee.
- (2) A person who immediately before the commencement of this Part was appointed to the existing planning committee is to be treated as having been appointed to the new planning committee on the same terms and conditions as applied immediately before that commencement.

- (3) This section does not prevent the terms and conditions being varied after that commencement.
- (4) A reference in any enactment or document in force or created before the commencement of this Part to the existing planning committee is to be taken to be a reference to the new planning committee.

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

- (1) This section applies if —
  - (a) an application under this Act was made before the commencement of this Part; and
  - (b) the application is to be determined by the existing planning committee.
- (2) The application may, on or after commencement of this Part, be determined by the new planning committee in the same way as it would have been determined by the existing planning committee.

### **39G Transitional provision about existing consents and determinations**

On and after the commencement of this Part, a planning approval, consent or other determination under this Act given by the existing planning committee continues to have effect as if it had been given by the new planning committee.».

## **12 Section 45 amended**

- (1) Section 45 (interpretation) is amended as follows.
- (2) In subsection (1), after the definition of “planning approval” insert —
  - «**“planning authority”** has the meaning given by subsection (3);»; and
  - «**“planning committee”** means the committee established under section 39B;».
- (3) After subsection (2) —
  - «(3) A reference in a public document to a “planning authority” is a reference to any person responsible for determining an application for planning approval, giving a consent or otherwise making a determination in relation to a matter under this Act or an enactment that relates to town and country planning.

Here “person” includes a body whether corporate or not (and in particular includes the planning committee constituted by section 39B).».

## DIVISION 6 – OUTSIDE ORGANISATIONS

**13 Section 40 amended**

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

- (a) in subsection (1), for “Council of Ministers shall”, substitute «Council of Ministers may»; and
- (b) in subsection (3), for “Cabinet Office must”, substitute «Cabinet Office may».

## DIVISION 7 – GENERAL IMPORTANCE

**14 Section 45A – inserted**

After section 45 (interpretation), insert –

**«45A General importance**

- (1) In this Act a consideration or matter of “general importance” means a consideration or matter –
  - (a) 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 1982;
  - (b) 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) for which an environmental impact assessment is required under –
    - (i) any enactment;
    - (ii) a development plan policy;
    - (iii) a national policy directive; or
    - (iv) a planning policy statement.
- (2) A matter or consideration to which subsection (1)(a) applies, in respect of which there is a relevant national policy directive, is not a matter or consideration of general importance.

- (3) The Council of Ministers may issue guidance about the meanings of any of the terms in subsection (1)(b).
- (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.
- (6) Guidance issued under subsection (3) must be published by the Council of Ministers in a manner the Council considers will bring it to the attention of those likely to be affected by it.
- (7) The Council of Ministers may by order –
  - (a) amend subsection (1) to add, amend or remove a consideration or matter;
  - (b) make further provision, or amend or repeal existing provision, about a consideration or matter which is, and is not, within subsection (1).
- (8) An order under subsection (7)(b) may amend this Act.».

### PART 3 – GENERAL

#### 15 Consequential amendments

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

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