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## TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2023

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### Explanatory Memorandum

1. This Bill is promoted by.
2. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.
3. *Clause 1* provides the short title of the Bill.
4. *Clause 2* deals with commencement.
5. *Clause 3* is introductory and provides that the *Town and Country Planning Act 1999* is amended in accordance with the following sections.
6. *Clause 4* amends section 4 of the Act. Section 4 provides that where an area of land is specified for treatment by development that treatment must take place within a period which must be specified.
7. *Clause 5* amends section 6 of the Act to widen the meaning of “development” and to expand the list of matters which do not qualify as “development”.
8. *Clause 6* amends section 8 of the Act to introduce a concept of prior approvals as part of the planning process and to specify the types of conditions and limitations to which approval may be made subject.
9. *Clause 7* amends section 10 of the Act to make consequential amends following the provisions on “prior approval”.
10. *Clause 8* amends section 14 of the Act to provide that object fixed or not fixed to a building may or may not be included in the entry in the register of protected buildings in respect of that building.
11. *Clause 9* inserts new section 43B which provides an order making power in respect of fees and charges.
12. *Clause 10* makes a consequential amendment to section 44 of the Act to make an order under new section 43B subject to Tynwald approval.
13. *Clause 11* amends section 45 of the Act to introduce a definition of “prior approval” and amends the definition of “registered building”.
14. *Clause 12* amends section 45 of the Act to insert definitions of “prior approval” and “registered building”.
15. *Clause 13* amends Schedule 2 to the Act to provide that entries on the protected buildings register may be amended.
16. *Clause 14* makes saving and transitional provisions as a result of clause 9.
17. *Clause 15* makes consequential provision following clause 4 so that the current Area East Plan is to be read in the light of that clause.
18. The resulting Act will be cost neutral.





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## TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2023

A **BILL** to amend the Town and Country Planning Act 1999 by expanding the definition of “development” for the purposes of that Act, to provide for a system of prior approvals following the grant of planning approval and to provide for the imposition of fees and charges; and for connected purposes.

**BE IT ENACTED** by the King’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 2023.

#### 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 consider 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.

#### 4 Amendment of section 4

(1) Section 4 (acquisition of land) is amended as follows.

(2) For subsection (2)(b), substitute —

| «(b) specify —  
| (i) the period within which that treatment is to begin; or

- (ii) that the period in subsection (2A) applies.».
- (3) After subsection (2), insert —
  - «(2A) The period referred to in subsection (2)(b)(ii) is a period of 10 years beginning with the date on which the plan is adopted.».

## 5 Amendment of section 6

- (1) Section 6 (meaning of “development”) is amended as follows.
- (2) In subsection (2) —
  - (a) after paragraph (a), insert —
    - «(aa) the temporary siting of a moveable structure on land involves a material change in its use;»;
  - (b) in paragraph (d) —
    - (i) for “the following are engineering operations constituting development” substitute «engineering operations include»;
    - (ii) at the end of sub-paragraph (ii), omit “and”;
    - (iii) after sub-paragraph (iii), insert —
      - «(iv) hardstanding of domestic gardens;»;
  - (c) for paragraph (e) substitute —
    - «(e) building operations include—
      - (i) repairs to buildings;
      - (ii) rebuilding;
      - (iii) painting of the exterior of buildings;
      - (iv) the demolition of all or part of a building including cases where that building is attached to another building and no part of that other building is also demolished.».
- (3) After subsection (3)(a), insert —
  - «(aa) the carrying out on land within the boundaries of a highway of any works exclusively required for its maintenance: “highway” means a highway maintainable at public expense for the purposes of the *Highways Act 1986*;
  - (ab) the carrying out of any works for sole the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose but only where such a street or other land is reinstated to substantially the same condition it was in prior to those works taking place;
  - (ac) the carrying out on land within the boundaries of a watercourse of any works exclusively required for its maintenance: “watercourse” means a watercourse within the meaning of the *Flood Risk Management Act 2013*;».

## 6 Amendment of section 8

- (1) Section 8 (development orders) is amended as follows.

- (2) After subsection (3), insert —
- «(3A) Without limiting subsection (3), where planning approval is given by a development order for development of a specified class, the order may enable the Cabinet Office to direct that the approval shall not apply either—
- (a) in relation to development in a particular area; or
- (b) in relation to any particular development.».
- (3) In subsection (4), after “conditions” insert «(including prior approval)».
- (4) After subsection (4), insert —
- «(4A) Without limiting subsection (4), conditions or limitations that may be imposed include those in respect of —
- (a) the character and appearance of an area;
- (b) historical, architectural, traditional artistic or archaeological features of any building within the development;
- (c) the local environment or local amenity;
- (d) road safety and the flow of traffic on public highways;
- (e) public safety or convenience.
- (4B) The conditions referred to in subsection (4) may include a condition requiring the approval, before the development commences (“prior approval”), of the Department to be obtained in respect of —
- (a) specified parts of the development;
- (b) specified uses of any part of the land which is the subject of the development; or
- (c) both.».

## 7 Amendment of section 10

In section 10(6)(e) (determination of planning applications), after “condition” insert «(including prior approval)».

## 8 Amendment of section 14

(1) Section 14 (the protected buildings register) is amended as follows.

(2) After subsection (2) insert —

«(2A) An entry for a building may provide that an object or structure (whether fixed to a building or not) or any part or feature of a building, is not of special architectural or historical interest.».

(3) In subsection (3), at the end insert «and entries in it».

## 9 Omission of section 19

Section 19 (control of demolition in conservation areas) is omitted.

## 10 New section 43B

After section 43 (rights of entry), insert —

**«43B Fees for planning applications etc.**

- (1) This section applies in respect of fees or charges not otherwise provided for in this Act.
- (2) The Department may by order make provision for the payment of a fee or charge to it in respect of—
  - (a) the performance by it of any of its functions under this Act;
  - (b) anything done by it which is calculated to facilitate or is conducive or incidental to the performance of any such function;
  - (c) any application for planning approval deemed to be made under Schedule 4;
  - (d) any application for planning approval which is deemed to be made to it under—
    - (i) any provision of this Act other than Schedule 4; or
    - (ii) any order or regulations made under this Act.
- (3) An Order under this section may in particular—
  - (a) make provision as to when a fee or charge payable under the order is to be paid;
  - (b) make provision as to who is to pay a fee or charge payable under the order;
  - (c) make provision as to how a fee or charge payable under the order is to be calculated including by reference to the percentage change in any relevant index;
  - (d) make provision as to who is to make the calculation;
  - (e) prescribe circumstances in which a fee or charge payable under the order is to be remitted or refunded (wholly or in part);
  - (f) prescribe circumstances in which no fee or charge is to be paid;
  - (g) make provision as to the effect of paying or failing to pay a fee or charge in accordance with the order.
- (4) An order under this section may —
  - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
  - (b) in the case of an order made by virtue of paragraph (a), amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (5) A financial year is the period of 12 months beginning with 1 April.
- (6) “Relevant index” means any of the following —
  - (a) the retail prices index;
  - (b) the consumer prices index;
  - (c) any similar general index of prices published by the Board of the UK Statistics Authority.».



**11 Amendment of section 44**

In section 44(2) (Tynwald control of orders and regulations), after “39C(1)” insert «or 43B».

**12 Amendment of section 45**

- (1) Section 45 (interpretation) is amended as follows.
- (2) In subsection (1)—
  - (a) at the appropriate place in the order, insert —
    - «**prior approval**” means the approval of the Department which must be obtained under a condition of a development order before development under the order commences in respect of —
      - (a) specified parts of the development;
      - (b) specified uses of any part of the land which is the subject of the development; or
      - (c) both (a) and (b);»;
    - (b) for the definition of “registered building”, substitute —
      - «**registered building**” means all or part of a building of architectural or historical interest for the time being entered in the register;».
- (3) After subsection (3), insert —
  - «(4) For the purposes of this Act, a registered building shall be treated as including any object or structure —
    - (a) fixed to the building;
    - (b) not fixed to the building but within its curtilage, and which forms part of the land and has done so since before 1 January 1983.».

**13 Amendment of Schedule 2**

- (1) Schedule 2 (the Protected Buildings Register) is amended as follows.
- (2) In paragraph 1, after “from it” insert «or otherwise amending an entry in respect of a building».
- (3) In paragraph 2 —
  - (a) for sub-paragraph (1) substitute —
    - «(1) Where —
      - (a) a building has been entered in the register;
      - (b) an entry in the register in respect of a building has been removed; or
      - (c) such an entry has otherwise been amended,
 the Department must, as soon as reasonably practicable, serve a notice on the owner and the occupier of the building of that fact.»;
    - (b) omit sub-paragraph (2).
- (4) In paragraph 3, omit sub-paragraph (b).

**14 Savings and transitionals**

- (1) In this section “the 1999 Act” means the Town and Country Planning Act 1999.
- (2) Subsection (3) applies to an application made before this Act comes into operation for which approval under Part 2 of the 1999 Act and consent under section 19 of that Act were both required.
- (3) If in respect of an application referred to in subsection (2) —
  - (a) the Department has given consent under section 19 of the 1999 Act, that consent shall remain valid;
  - (b) that application has not been disposed of before section 9 of this Act comes into operation, section 19 of 1999 Act as it applied immediately before the coming into operation of section 9 of this Act continues to apply to such an application; and
  - (c) that application has not been disposed of under Part 2 of the 1999 Act before this Act comes into operation —
    - (i) Part 2 of the 1999 Act shall continue to apply to such an application as it applied immediately before the coming into operation of this Act; and
    - (ii) section 5(2)(e) of this Act shall not affect such an application.
- (4) Subsection (5) applies to an application made before this Act comes into operation for which approval under Part 2 of the 1999 Act was not required but consent under section 19 of that Act was.
- (5) If in respect of an application referred to in subsection (4) —
  - (a) the Department has given consent under section 19 of the 1999 Act prior to section 9 of this Act coming into operation, that consent shall remain valid;
  - (b) the application has not been disposed of before section 9 of this Act comes into operation, section 19 of 1999 Act as it applied immediately before the coming into operation of section 9 of this Act continues to apply to such an application; and
  - (c) sections 5(2)(e) and 9 of this Act shall not otherwise affect such an application.
- (6) Subsection (7) applies where an application for planning approval —
  - (a) was made before section 5(2)(e) of this Act comes into operation; was made in respect of an area which is not a conservation area; and
  - (b) involves the demolition in that area of all of a building which is not attached to any other building.
- (7) Where this subsection applies —
  - (a) section 5(2)(e) of this Act shall not affect that application; and
  - (b) section 6(2)(e) of the 1999 Act as it applied immediately before the coming into operation of section 5(2)(e) of this Act shall continue to apply to the approval of that application.
- (8) Where an application under paragraph 2(2) of Schedule 2 to the 1999 Act has been made, but not disposed of, before section 13(3) of this Act comes into operation –

- (a) that application shall be dealt with under that paragraph as it was in operation immediately before section 13(3) of this Act comes into operation; and
  - (b) section 13(3) of this Act shall not affect that application.
- (9) It is irrelevant for the purposes of this section whether or not an application is approved on appeal under the 1999 Act.

## **15 Consequential**

- (1) The reference to the period not exceeding 5 years in section 4(2) of the Town and Country Planning Act 1999 in the Area Plan for the East shall be read as a reference to a period not exceeding 10 years and —
- (a) the Cabinet Office shall, in the Town and Country Planning (Area Plan for the East) Order 2020 (SD 2020/0430), be deemed to have adopted that Plan as if it referred to a period not exceeding 10 years; and
  - (b) Tynwald shall be deemed to have approved that Order on that basis.
- (2) The Area Plan for the East means the area plan adopted by the Cabinet Office by order on 21 September 2020 and which Tynwald approved on 18 November 2020.