



CHANGING LOCAL GOVERNMENT LEGISLATION

DEPARTMENT OF INFRASTRUCTURE

OCTOBER 2017

INTRODUCTION

This consultation is designed to invite comments on the Department of Infrastructure's proposed amendments to the Local Government Act 1985 and other local government legislation.

The current legislation is over 30 years old and is in need of updating such as progressing the recommendations of the Select Committee of Tynwald on Local Authorities: Members' interests.

In addition areas of governance, tendering and simplifying the process for local authorities to work together and implementing byelaws are part of the consultation.

We welcome your views not only on the specific questions asked, but also on any other aspect of the proposed legislation.

Hon R Harmer MHK

Minister for Infrastructure

PART 1- THE NEED

1. BACKGROUND

- 1.1 The Department proposes to introduce a Bill to put into effect a number of recommendations of a Select Committee of Tynwald on Local Authorities: Members' Interests. This would amend the Local Government Act 1985. As part of this work the Department is also looking at updating the sections of the Act relating to joint boards.
- 1.2 The Department is also taking this opportunity to address other known issues with local government legislation, for example the Local Elections Act 1986. This consultation paper will go into more detail about the known issues which the Department wishes to resolve and in some circumstances provide further clarification on the existing provisions.

2. PROPOSED AMENDMENTS THAT NEED TO BE INCLUDED IN THE BILL

- 2.1 The Department suggests that the Local Government (Amendment) Bill will:
 - Implement the recommendations of the Select Committee of Tynwald on Local Authorities: Members' Interests (**see Appendix A**).
 - Provide clarification on matters that must or may be included in joint board Orders.
 - Strengthen the legislation regarding joint board Orders.
 - Clarify the obligations of joint boards and joint committees.
 - Repeal the Douglas Market Act 1956.
 - Update requirements relating to Member's expenses/allowances.
 - Clarify local authority boundaries.
 - Clarify the requirements for election and holding office as a member of a local authority.
 - Clarify the process for filling casual and unfilled political vacancies.
 - Clarify the process required to alter the number of local authority members and/or wards.
 - Amend the local government superannuation scheme legislation.
 - Update the requirements relating to the inspection of the minutes from local authority meetings.

- Provide clarity on tendering for, and the carrying out of, works by local authorities.
 - Amend the Tynwald procedure for the introduction of local authority byelaws.
 - Clarify the provisions relating to open space.
 - Update the Department's powers in relation to local authority governance.
- 2.2 Throughout the document there are a number of questions where the Department is seeking a view on the proposed legislative change to the legislation. In some places the Department is certain that the change does need to be implemented therefore there is no specific question asked. If you do have views on any part of the consultation which does not relate to a specific question please notify the Department using the contact details at the end of this consultation document.

3. BACKGROUND TO ISSUES REQUIRING LEGISLATIVE CHANGE

The legislative recommendations of the Select Committee of Tynwald on Local Authorities: Members' interests (see Appendix A)

- 3.1 To improve openness and transparency regarding declarations of interest by local authority members, the current voluntary guidance will be replaced with a statutory requirement.

Clarification of what matters must or may be included in joint board Orders

- 3.2 Joint board Orders have been created over recent years to enable local authorities to work together to carry out specific local authority functions e.g. refuse collection, administration of civic amenity sites, swimming pools and elderly persons housing complexes.
- 3.3 To ensure that the joint board is able to function properly, new provisions will specify what matters must or may be included in the Orders which establish the joint boards.

Clarify the obligations under the 1985 Act that apply to joint boards

- 3.4 Joint boards are established by an Order. At present the legislation is confusing as it applies a number of provisions of the 1985 Act to joint boards, often with modification. The Department proposes to make this easier to understand by ensuring that the legislation setting out what needs to be in an Order to establish a Joint Board includes all the various provisions in one place.

Apply various provisions to joint boards and joint committees

- 3.5 The minimum level of standards required of local authorities will be applied, where appropriate, to joint boards and joint committees. This will ensure that where a joint board or committee undertakes a function on behalf of a local authority, the

same level of standards would be required of the joint board or committee as if that service were to be carried out by a local authority.

- 3.6 The requirements of local authorities regarding conflicts of interest will be applied to joint boards and joint committees.
- 3.7 It may be appropriate to further clarify the status of joint boards and joint committees, as there are currently only limited requirements regarding their operation. For example, should they be local authorities in their own right? This issue will require further discussion with the Attorney General's Chambers.

Question 1 – Should the provisions of the Local Government Act 1985 which relate to minimum standards be applied to joint boards and joint committees?

Question 2 – Should the provisions of the Local Government Act 1985 which relate to conflicts of interests, be applied to joint boards and joint committees?

Question 3 – Should the status of joint boards and joint committees be further clarified?

Repeal the Douglas Market Act 1956

- 3.8 Douglas Borough Council has sold the Market Hall, the Act is no longer required and consequently will be removed from the statute book.

Update the provisions relating to member expenses/allowances

- 3.9 The Department consulted on the scheme setting out Members' Allowances in 2013 at the request of some local authorities. The consultation identified that there was no consensus regarding the scheme that should be in place.
- 3.10 A new scheme came into operation in April 2014 which set out a new hourly attendance rate per session payable to members of local authorities, in addition to establishing the maximum amount of allowances permitted to be payable to a member in any one year.
- 3.11 The scheme also set different allowances for daytime and evening sessions. This was a change from the previous scheme which provided for a one-off fee for every meeting held regardless of the length of the meeting.
- 3.12 A consultation with local authorities in 2014 to review the scheme identified that there was still no clear consensus. A number of authorities felt that the new system was an administrative burden compared to the previous scheme and wanted to return to the previous scheme.
- 3.13 Attendance allowances will be reviewed during the next 12 months.
- 3.14 Member expenses will also be further clarified.
- 3.15 The Department proposes to devolve the power to set Members' expenses and allowances to the local authorities, subject to the consent of the Department.

Question 4 – Should the setting of Members’ expenses and allowances be the responsibility of local authorities?

Clarify local authority boundaries

- 3.16 Whilst people are generally aware of the whereabouts of local authority boundaries, the change to the polling districts for House of Keys Elections in 2015 has resulted in uncertainty as to whether the boundaries are established in statute.
- 3.17 The boundaries of Douglas, Onchan and Garff are certain. The former two are certain because of the various Acts of Tynwald relating to the extensions of the Borough and the rearrangement of Onchan over the years, and Garff because of the map annexed to the Order made by the Department in November 2015. Castletown is similarly defined by the deposited map referred to in the Castletown Town Act 1966.
- 3.18 Some other local authority boundaries may have been amended through local authority boundary inquiries that have taken place over the years.
- 3.19 The various revoked Polling District Orders continue to have effect for the purposes of local authority elections.
- 3.20 As the link to the old Keys constituencies might be lost over time, the local authority boundaries should be specified in statute.
- 3.21 The Department will insert a regulation-making power into the legislation to provide future flexibility.
- 3.22 The process for future local authority boundary changes will also be clarified in regulations.
- 3.23 The polling districts for each of the local authorities will also be clarified.

Modify the Local Election Act 1986 - Qualifications for election and holding office as a member of a local authority

- 3.24 To hold office as a member of a local authority, a candidate is required to be included on the register of electors.
- 3.25 A number of local authorities have taken a different interpretation of this provision, in that they believe it to mean that a member must be on the register of electors at all times. This has resulted in a number of local authority member seats being declared vacant because the previous member was not on the register.
- 3.26 There is a need to clarify this provision. By doing so, it could ensure that being on the register only applies to persons seeking election to a local authority at that time and that not being on the register does not automatically result in the disqualification of a member between elections. Alternatively, it could be compulsory for a member to be on and remain on the register throughout their time on an authority and should they not be on the register they must be removed from the authority.

- 3.27 The Department is proposing that the provision only applies to persons seeking election to a local authority and that not being on the register of electors does not automatically result in the disqualification of a Member between local authority elections.

Question 5 – Should the requirement to be on the register of electors only apply to persons seeking election to a local authority?

Question 6 - Should not being on the register of electors result in the disqualification of a Member between local authority elections?

Clarify the process for filling political vacancies and unfilled political vacancies

- 3.28 The Local Election Act 1986 makes provision for dealing with political vacancies arising from a variety of scenarios ranging from resignations to convictions. The legislation requires an election to be held when a local authority declares the office of a local authority member to be vacant or where two local government electors have requested an election to be held to fill a vacancy.
- 3.29 The process of filling vacancies when two local government electors have requested an election is unclear, and could be clarified by removing it. The Department is proposing that once a casual vacancy arises a local authority can start the election process.
- 3.30 The Act is unclear on how to fill political vacancies which exist within an authority following a local election where the authority has sufficient members to be quorate. The Department is proposing to allow local authorities to hold elections to fill unfilled vacancies.

Question 7 – Should the process for filling casual vacancies and unfilled vacancies be further clarified?

Clarify the process in relation to alterations of the number of local authority members and wards

- 3.31 At present, a local inquiry is required to consider proposals to alter the number of members of a local authority, the number of wards or the abolition of wards.
- 3.32 As such inquiries can be costly and time consuming they could be considered disproportionate. The processes for dealing with these matters therefore need to be simplified.

Question 8 – Should the process for the alteration in the number of local authority members and wards be simplified?

Amend the Local Government Superannuation Scheme legislation

- 3.33 The legislation which governs local authority superannuation schemes refers to legislation which has been repealed in the UK. The local government pension scheme legislation will be updated to reflect these legislative changes.

Update provisions relating to the inspection of the minutes of local authority meetings

- 3.34 At present only ratepayers are permitted to inspect the minutes of local authority meetings at reasonable times.
- 3.35 This provision will be updated so that any person may inspect the minutes of any local authority meeting. The extension of Freedom of Information legislation to local authorities with effect from 1st January 2018 will entitle any Isle of Man resident to that information via a Freedom of Information ("FOI") request. This amendment will ensure local authorities are open and transparent in their decision making processes.
- 3.36 This is also an opportunity to modernise the operation of local authorities in relation to public access to meetings and various documents of local authorities. It is intended that provisions that allow greater access to local authority meetings and documents will assist local authorities in reducing the quantity of FOI requests in the first place.

Question 9 – Should meetings and documents of local authorities be publicly accessible?

Provide clarity on tendering for, and the carrying out of, works by local authorities

- 3.37 A local authority is able to carry out such services as are necessary to fulfil its functions and are within its powers. These functions and powers are set out in various pieces of legislation, most particularly the Local Government Acts 1946-2006 inclusive.
- 3.38 In recent months, questions have been raised about the legislation that empowers local authorities to tender for commercial contracts. The legislation is complex as various enactments are involved to determine whether or not a local authority can tender for, and carry out, works.
- 3.39 It has become necessary to clarify the law in this area to provide clarity on what work can be tendered for, and carried out, by a local authority.

Question 10 – Should the legislation regarding what work can be tendered for and carried out by a local authority be clarified?

Amend the Tynwald procedure for the introduction of Local Authority Byelaws

- 3.40 Local authorities are able to make byelaws under the Dogs Act 1990 by seeking the approval of the Department before the Department lays the byelaw before Tynwald. This process does not require the express approval of Tynwald.
- 3.41 Byelaws made under other enactments such as the Local Government Act 1985, require Tynwald approval.

- 3.42 Consideration will be given as to whether byelaws made by a local authority should either be subject to Tynwald approval or be subject to the same approval procedure for byelaws made under the Dogs Act 1990.

Question 11 – Should byelaws be approved by the Department instead of Tynwald and then laid before Tynwald?

Clarify provisions relating to open space

- 3.43 The Local Government (Miscellaneous Provisions) Act 1984 specifies that a local authority shall hold and manage open space for the purpose of allowing the enjoyment by the public.
- 3.44 This may prevent local authorities from leasing open space to another party to manage and to use for the benefit of the community.
- 3.45 The Department would like to understand whether this is a particular problem and whether the current provisions should be reviewed to permit open space to be leased or licensed to another party.

Question 12 – Does the Local Government (Miscellaneous Provisions) Act 1984 need to be amended to allow for the leasing or licensing of open space to other parties?

Update the Department's powers in relation to local authority governance

- 3.46 The Department has certain default powers, set out in section 5 of the Local Government Act 1985, which allows it to step in where a local authority fails to discharge a function. The Department is aware that there have been calls for it to be able to intervene in a greater number of circumstances.
- 3.47 In addition to the Department's powers, the Tynwald Commissioner for Administration will be able to investigate certain matters in relation to local authorities, joint boards and joint committees. However, the legislation to allow this to occur has not yet come in operation.

Question 13 – Are the Department's powers to deal with failures within a local authority adequate?

4. FUTURE COMPREHENSIVE REVIEW

- 4.1 The Department is intending to carry out a comprehensive review of Local Government legislation within the next 5 years and is undertaking preliminary work by seeking views on which areas of Local Government legislation should be included in the review.

Question 14 – What other areas of the local Government legislation should be included in the comprehensive review?

5. NEXT STEPS

- 5.1 Following the analysis of the consultation results, the Department intends, subject to Council of Ministers' approval, to introduce a Bill into the House of Keys early 2018.

FEEDBACK TO THE CONSULTATION

Information provided in response to this consultation will be dealt with in accordance with the access to information regimes. These are primarily the Guidance on the Code of Practice on Consultation and the Code of Practice on Access to Information.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation. In any consultation the responses received do not guarantee that changes will be made to what has been proposed.

It is also important to take into consideration that making a representation does not necessarily mean that the Department will make a change to legislation.

If you wish to submit your views, or there is some point of clarification you would like to receive, you are invited to respond:

By email to LocalGovernment@gov.im

Or in writing to:

Ian Brooks, Department of Infrastructure, Sea Terminal Buildings, Douglas, Isle of Man, IM1 2RF

The closing date for consideration of responses is 4th December 2017.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group please make clear your position.

APPENDIX A

Select Committee of Tynwald on Local Authorities: Members' Interest recommendations

Recommendation 1

That the Department of Infrastructure should introduce legislation to require all members of local authorities to register any interest which could reasonably be regarded as bearing upon the way in which a member may carry out his or her duties.

Recommendation 2

That the definition of "relevant interest" applicable to members of local authorities should be the same as that applicable to Members of Tynwald except that shares in a UK company need not normally be declared unless and until they become relevant to a matter under consideration.

Recommendation 3

That the Department of Infrastructure should introduce legislation to require that the registers (or "books") currently maintained by local authorities under section 13 of the Local Government Act 1985, together with the registers of interests declared under Recommendations 1 and 2 above, must be made open to inspection by the public.

Recommendation 4

That the Department of Infrastructure should consider as part of any wider review of local authorities whether it should be given an express statutory power to issue guidance to local authorities, with local authorities being placed under an express statutory duty to follow such guidance.