

**HOUSING (MISCELLANEOUS PROVISIONS)  
(AMENDMENT) BILL 2021**

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**Explanatory Memorandum**

1. This private member's Bill is promoted by Mr Lawrie Hooper, MHK.
2. *Clauses 1 and 2* deal, respectively, with the Short Title and Commencement of the resulting Act.
3. *Clause 3* declares that the *Housing (Miscellaneous Provisions) Act 2011* ("the 2011 Act") is amended as specified in the succeeding clauses.
4. *Clause 4* amends section 16 of the 2011 Act by inserting definitions of terms being inserted by the Bill.
5. *Clause 5* amends section 17 of the 2011 Act. The main change it makes is that it introduces the concept of a "specific management application", which is an application for a management order made by a "relevant RTM company" (one of the new terms defined in the amendments made by clause 16). Crucially, a "specific management application" is one made without regard to whether or not the person with responsibility for maintenance of the premises in question is failing in those obligations (or is likely to so fail). This is different from the management applications for which the 2011 Act currently provides, in that those applications are predicated on the responsible person's failure or expected failure to discharge the management obligations. Such a management obligation is retitled a "general management application". Another important distinction is that, in a "general management application", no attempt may be made to influence the Commissioners' decision as to who to appoint as manager (should they grant the management order applied for); whereas, in a "specific management application" the "relevant RTM company" must request that the management order be granted in favour of the "relevant RTM company" itself. In the event that the Commissioners are minded to grant a management order in response to a "specific management application", they may not make the order in favour of anyone other than the "relevant RTM company".
6. *Clause 6* amends section 18 of the 2011 Act by making the distinction between a "general management application" and a "specific management application".
7. *Clause 7* amends section 19 of the 2011 Act by inserting references to a "general management application" in place of the generic references to a "management application".
8. *Clause 8* repeals and replaces section 20 of the 2011 Act. It re-enacts many of the provisions of the current section 20, which specifies the effect of management orders. Crucially, however, it makes clear that a management order can only be

made in respect of a “general management application” where there is actual or apprehended failure to satisfactorily discharge management obligations.

9. *Clause 9* inserts new sections into the 2011 Act, i.e. sections 20A to 20G. These new sections make extensive provisions regarding the concept of a “RTM company”, including the definition of it, its composition, the procedure it is required to follow when making a “specific management application” (which it alone is authorised to make), the effect of a management order granted in response to a “specific management application”, and how such management orders may be discharged.
10. *Clause 10* inserts a new cross-heading immediately before section 21 of the 2011 Act.
11. *Clause 11* repeals and replaces section 22 of the 2011 Act. The new section 22 is almost identical to its predecessor. The only difference is that the new section 22 requires the Department to make regulations that specify the form of and content of notices, whereas the predecessor does not require regulations. The regulations required by the new section 22 are subject to Tynwald approval.
12. The resulting Act is expected to have, at most, minimal financial and human resources implications. The existing staff of the Department of Infrastructure is expected to be able to cope with the consequent requirement to produce secondary legislation. Further, the Rent and Rating Appeal Commissioners may see an uptick in their work with respect to dealing with management applications, particularly on account of the introduction of the concept of the “specific management application”. However, as this work will be demand led and therefore is not expected to result in a constant stream of new applications, it is expected that Commissioners will also be able to cope without the need for additional staff or financial resources.
13. 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*.



*Ellan Vannin*

*Ellan Vannin*

## HOUSING (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 2021

1 **A BILL** to amend the Housing (Miscellaneous Provisions) Act 2011 by making  
 2 further provision in relation to leasehold premises; to permit qualifying tenants  
 3 to form a company through which to apply for a management order in respect of  
 4 the premises of which they are tenants; to permit qualifying tenants of premises  
 5 to apply for a management order in respect of the premises without regard to  
 6 whether or not the management responsibilities are being satisfactorily  
 7 discharged; 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:—

8 **1 Short title**

9 The short title of this Act is the Housing (Miscellaneous Provisions)  
 10 (Amendment) Act 2021.

11 **2 Commencement**

- 12 (1) This Act comes into operation on such day or days as the Department of  
 13 Infrastructure may by order appoint.
- 14 (2) An order under subsection (1) may contain such consequential, incidental,  
 15 supplemental, transitional and transitory provision as appears to the  
 16 Department of Infrastructure to be necessary or expedient.

17 **3 Amendment of the 2011 Act**

18 The Housing (Miscellaneous Provisions) Act 2011 (“the 2011 Act”) is amended as  
 19 follows.

20 **4 Amendment of section 16**

21 Section 16 of the 2011 Act is amended by inserting, in subsection (1) and in  
 22 alphabetical sequence, the following definitions —

1 “**qualifying tenant**” - see section 25;”

2 “**RTM company**” – see section 20A;”

3 “**relevant premises**” means the block of flats (or other composite  
4 premises consisting of multiple residential units) to which a  
5 management application relates;”

6 “**relevant RTM company**” means a RTM company –

7 (a) the membership of which includes at least 2 qualifying  
8 tenants of the premises (or of any premises containing  
9 or contained in those premises) in respect of which the  
10 RTM company makes a specific management  
11 application;

12 (b) in relation to premises containing, or in which is  
13 contained, the premises of which the qualifying  
14 tenants referred to in paragraph (a) are tenants; and

15 (c) which is not already the subject of a management  
16 order granted in respect of any premises;

17 (See also section 20A(2).);

18 “**specific management application**” – see section 17(1)(b);”.

19 **5 Amendment of section 17**

20 Section 17 of the 2011 Act is amended –

21 (a) by substituting the following for subsection (1) –

22 “(1) Either of the following may, in accordance with this Part,  
23 apply to the Commissioners for a management order –

24 (a) the tenant of a flat contained in relevant premises  
25 (whose application must be referred to as a  
26 “**general management application**”); or

27 (b) a relevant RTM company (whose application must  
28 be referred to as a “**specific management**  
29 **application**”) that complies with section 20D.

30 This subsection is subject to subsection (1A).”; and

31 (b) by inserting the following immediately after subsection (1) –

32 “(1A) The applications referred to in subsection (1) are,  
33 respectively, subject to the following provisions –

34 (a) with respect only to a general management  
35 application –

36 (i) the application must not contain a request  
37 that the Commissioner appoint a specified  
38 person as manager; and

- 1 (ii) should they decide to make the  
 2 management order, the Commissioners  
 3 must select the manager in exercise of their  
 4 sole discretion; and
- 5 (b) with respect only to a specific management  
 6 application —
- 7 (i) the relevant RTM company must request  
 8 that it be appointed manager; and
- 9 (ii) should the Commissioners decide to make  
 10 the management order, they must not  
 11 appoint as manager any person other than  
 12 the relevant RTM company.”.

## 13 6 Amendment of section 18

14 Section 18 of the 2011 Act is amended —

- 15 (a) by substituting the following for subsection (1) —
- 16 “(1) Before submitting either a general management  
 17 application or a specific management application in  
 18 respect of any premises, the applicant must serve a  
 19 notice (“**a management application notice**”) on —
- 20 (a) the landlord; and
- 21 (b) any other person by whom obligations relating  
 22 to the management of the premises, or any part  
 23 of them, are owed to the tenant under the  
 24 tenancy.
- 25 This is subject to subsection (3).”; and
- 26 (b) in the portion of subsection (2) immediately before its paragraph  
 27 (a), by inserting, between “A management application notice” and  
 28 “must”, the following —  
 29 “in respect of a general management application”.

## 30 7 Amendment of section 19

31 Section 19 of the 2011 Act is amended —

- 32 (a) in subsection (1), by substituting “A general management  
 33 application” for “A management application”; and
- 34 (b) in subsection (2), by inserting “in respect of a general management  
 35 application,” immediately after “has been served”.

## 36 8 Repeal and replacement of section 20

37 The following is substituted for section 20 of the 2011 Act —

## | “20 Management orders

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(1) If a management application (whether general or specific) is made in relation to any relevant premises, the Commissioners may make an order (“a management order”) appointing a manager to carry out —

(a) such functions in connection with the management of the premises; or

(b) such functions of a receiver,

or both, as the Commissioners think fit.

This subsection is subject to subsection (3).

(2) A management order may be interim or final.

(3) In response only to a general management application, the Commissioners may make a management order only if satisfied it is just and convenient to do so in all the circumstances of the case and that —

(a) any relevant person either —

(i) is in breach of any obligation owed by that person to the tenant under the tenancy and relating to the management of the relevant premises or any part of them; or

(ii) would, in the case of an obligation dependent on notice, be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give the relevant person appropriate notice;

(b) unreasonable service charges have been made, or are proposed or likely to be made;

(c) no service charges have been made, or are proposed or likely to be made, in circumstances where it would be reasonable to expect such charges to be made;

(d) there has been a failure to comply with a duty imposed by or by virtue of section 11 of the *Property Service Charges Act 1989* (tenants’ contributions to be held in trust); or

(e) the state of repair of the relevant premises (or a part of them) or their management is likely to improve significantly if a management order were made.

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- (4) On making a management order, the Commissioners must direct the Registrar General to cause the management order —
- (a) in the case of registered land, to be registered —
- (i) as a burden on the landlord’s title; and
- (ii) as an appurtenant right on the title of the tenants;
- (b) in the case of unregistered land, to be recorded in the Register of Deeds.
- (5) In this section, “relevant person” means a person —
- (a) on whom a management application notice has been served; or
- (b) in whose case the requirement to serve a management application notice has been dispensed with by an order under section 18(3).
- (6) For the purposes of subsection (3)(b), a service charge is unreasonable if —
- (a) the amount is unreasonable having regard to the items for which it is payable;
- (b) the items for which it is payable are of an unnecessarily high standard; or
- (c) the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.
- (7) The premises in respect of which a management order is made may, if the Commissioners think fit, be either more or less extensive than the premises specified in the application giving rise to the order.
- (8) A management order may make provision with respect to —
- (a) such matters relating to the exercise by the manager of functions under the order; and
- (b) such incidental or ancillary matters, as the Commissioners think fit; and, on any subsequent application made for the purpose by the manager, the Commissioners may give direction with respect to any such matters.
- (9) A management order may provide —

- 1 (a) for rights and liabilities arising under  
 2 contracts to which the manager is not a  
 3 party to become the manager's rights and  
 4 liabilities;
- 5 (b) for the manager to be entitled to prosecute  
 6 claims in respect of causes of action  
 7 (whether in contract or tort) accruing before  
 8 or after the date of the manager's  
 9 appointment;
- 10 (c) for remuneration to be paid to the manager  
 11 by any relevant person, or by the tenants of  
 12 the premises in respect of which the order is  
 13 made, or by all or any of those persons;
- 14 (d) for the manager's functions to be exercisable  
 15 (subject to subsection (10)) either during a  
 16 specified period or without limit of time.

17 Nothing in this subsection limits the operation of  
 18 subsection (8).

19 (10) If they make a management order, the  
 20 Commissioners may impose such conditions as  
 21 they think fit, including suspending the order's  
 22 operation on terms.

23 (11) In a case where an application for a management  
 24 order was preceded by the service of a management  
 25 application notice, the Commissioners may, if they  
 26 think fit, make such an order despite the fact that —

- 27 (a) any period specified in the management  
 28 application notice by virtue of section  
 29 18(2A) was not a reasonable period; or
- 30 (b) the notice failed in any other respect to  
 31 comply with any requirement contained in  
 32 section 18(2) or in any regulations applying  
 33 to the notice under section 18(2)(d).

34 (12) A management order is enforceable against any  
 35 person deriving title from the landlord in respect of  
 36 that person's interest in the premises to which the  
 37 order relates but without prejudice to —

- 38 (a) section 29 of the *Registration of Deeds Act*  
 39 *1961* (registration of encumbrances affecting  
 40 unregistered land); and
- 41 (b) section 31(4) of the *Land Registration Act*  
 42 *1982* (effect of transfer of registered land).".



1 **9 Insertion of new sections: sections 20A to 20G**

2 The 2011 Act is amended by inserting the following immediately after section 20

3 —

4 *“RTM companies*

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6 **20A RTM company: definition**

- 7 (1) A company is a RTM company if —
- 8 (a) it is a private company limited by guarantee and
- 9 incorporated in the Island; and
- 10 (b) its articles of association state that its object, or one of its
- 11 objects, is the acquisition and exercise of the right to
- 12 manage premises.
- 13 (2) A company is not a relevant RTM company if another company
- 14 is already the relevant RTM company in respect of the premises
- 15 (or to any part of the premises) to which the first-mentioned
- 16 company relates.
- 17 (3) A RTM company ceases to be a RTM company if the freehold
- 18 of any premises is conveyed or transferred to it. The time at
- 19 which it so ceases is when the conveyance or transfer is
- 20 executed and delivered.
- 21 (4) For the avoidance of doubt, in this Act the abbreviation “RTM”
- 22 in “RTM company” stands for “Right To Manage”.

23 **20B RTM company: membership and regulations**

- 24 (1) The persons who are entitled to be members of a company
- 25 which is a RTM company in relation to premises are —
- 26 (a) qualifying tenants of flats contained in premises;
- 27 provided that each flat is allocated no more than one
- 28 share, regardless of the number of qualifying tenants that
- 29 are parties to the lease of that flat ; and
- 30 (b) from the date on which it acquires the right to manage,
- 31 landlords under long leases of the whole or any part of
- 32 the premises.
- 33 (2) The Department may make regulations about the content and
- 34 form of the articles of association of RTM companies.
- 35 Tynwald procedure – approval required.
- 36 (3) A RTM company may adopt provisions of the regulations for
- 37 its articles.

- 1 (4) The regulations may include provision which is to have effect  
2 for a RTM company whether or not it is adopted by the  
3 company.
- 4 (5) A provision of the articles of a RTM company has no effect to  
5 the extent that it is inconsistent with the regulations.
- 6 (6) The regulations have effect in relation to articles —  
7 (a) irrespective of the date of the articles; but  
8 (b) subject to any transitional provisions of the regulations.

### 9 **20C Specific management application: further provision**

- 10 (1) A relevant RTM company must not make a specific management  
11 application unless —
- 12 (a) where there are only two qualifying tenants of flats contained  
13 in the relevant premises on the date of application, the relevant  
14 RTM company's membership includes both tenants;
- 15 (b) in any other case, the membership of the relevant RTM  
16 company on the date of application includes a number of  
17 qualifying tenants of flats contained in the relevant premises  
18 which is not less than one-half of the total number of flats so  
19 contained;
- 20 (c) the total number of flats held by qualifying tenants of the  
21 relevant premises is not less than  $\frac{2}{3}$  of the total number of flats  
22 contained in the relevant premises.
- 23 (2) Without limiting subsection (1), a relevant RTM company must not  
24 make a specific management application where —
- 25 (a) any part or parts of the premises is or are occupied or intended  
26 to be occupied otherwise than for residential purposes (“the  
27 non-residential part”); and
- 28 (b) the internal floor area of that part or those parts (taken together)  
29 exceeds  $\frac{1}{2}$  of the internal floor area of the premises (taken as a  
30 whole).
- 31 For the purposes of this subsection, the internal floor area of any  
32 common parts must be disregarded.

### 33 **20D Notice inviting participation**

- 34 (1) Before making a specific management application under  
35 section 17, a relevant RTM company must give notice to each  
36 person who, at the time when the notice is given, is a qualifying  
37 tenant of a flat contained in the premises.

- 1 | (2) A notice given under this section (a “notice of invitation to  
2 | participate”) must –
- 3 | (a) state that the relevant RTM company intends to acquire  
4 | the right to manage the premises;
- 5 | (b) state the names of the members and officers of the  
6 | relevant RTM company;
- 7 | (c) invite the recipients of the notice to become members of  
8 | the company; and
- 9 | (d) contain such other particulars as may be prescribed.  
10 | Tynwald procedure – approval required.
- 11 | (3) A notice of invitation to participate must be accompanied by a  
12 | copy of the articles of association of the relevant RTM company.
- 13 | (4) A notice of invitation to participate is not invalidated by its  
14 | containing an inaccuracy in any of the particulars which are set  
15 | out in it pursuant to this Part.

**20E****Specific management applications: notice to be served**

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- 17 | (1) Before making a specific management application under  
18 | section 17, the relevant RTM company must serve a notice (a  
19 | “management application notice”) on –
- 20 | (a) the landlord;
- 21 | (b) the managing agent; and
- 22 | (c) any other person by whom obligations relating to the  
23 | management of the premises, or any part of them, are  
24 | owed to the tenant under the tenancy.
- 25 | (2) A notice given under this section must contain such details as  
26 | may be prescribed.  
27 | Tynwald procedure – approval required.
- 28 | (3) The management application notice may not be given unless  
29 | each person required to be given a notice of invitation to  
30 | participate under section 20D has been given such a notice at  
31 | least 14 days before.
- 32 | (4) The Commissioners may (whether on the hearing of a  
33 | management application or not) –
- 34 | (a) by order dispense with the requirement to serve a  
35 | management application notice on a person if satisfied  
36 | that its service would not be reasonably practicable; and

- (b) if they make an order under paragraph (a), direct that such other notices be served, or such other steps be taken, as they think fit.

**20F Management orders based on specific management applications**

- (1) Where —
- (a) a specific management application is made under section 17; and
- (b) the Commissioners are satisfied that the relevant RTM company was, on the relevant date, entitled to acquire the right to manage the relevant premises,
- the Commissioners must make an order (“**a management order**”) appointing the relevant RTM company to carry out such functions in connection with the management of the premises from a date specified in the order.
- (2) On making a management order, the Commissioners must direct the Chief Registrar to cause the management order —
- (a) in the case of registered land, to be registered —
- (i) as a burden on the landlord’s title; and
- (ii) as an appurtenant right on the title of the tenants;
- (b) in the case of unregistered land, to be recorded in the Register of Deeds.
- (3) The premises in respect of which a management order is made may, if the Commissioners think fit, be either more or less extensive than the premises specified in the specific management application giving rise to the order.
- (4) A management order may make provision with respect to —
- (a) such matters relating to the exercise by the relevant RTM company, or a person authorised to act on behalf of the relevant RTM company, of functions under the order; and
- (b) such other incidental or ancillary matters as the Commissioners think fit; and on any subsequent application made for the purpose of the relevant RTM company, the Commissioners may give directions with respect to any such matters.
- (5) Without limiting subsection (4), a management order may provide —

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- (a) for rights and liabilities arising under contract to which the relevant RTM company is not a party to become the relevant RTM company's rights and liabilities;
- (b) for the relevant RTM company to be entitled to prosecute claims in respect of causes of action (whether in contract or tort) accruing before or after the date of the relevant RTM company's appointment;
- (c) for the relevant RTM company to be provided with any information which the company reasonably requires to enable it to discharge its functions under the order;
- (d) for the transfer to the relevant RTM company of any service charges held in relation to the premises.

- (6) Where any premises have been specified in a management order under this section, no general management application or specific management application may subsequently be made in respect of the premises or any part of the premises so long as the management order continues in force.

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**20G****Discharge of management orders**

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- (1) The Commissioners may, on an application of any interested person, vary or discharge a management order granted in favour of a relevant RTM company and direct the cancellation of any entry registered under the *Land Registration Act 1982* protecting the order.
- (2) The Commissioners may impose conditions on the variation or discharge of the order.
- (3) The Commissioners may only vary or discharge a management order under subsection (1) if satisfied that —
  - (a) the relevant RTM company either —
    - (i) is in breach of any obligation owed by that company to the tenant or landlord under the tenancy and relating to the management of the relevant premises or any part of them; or
    - (ii) (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant or landlord to give the relevant person the appropriate notice;
  - (b) unreasonable service charges have been made, or are proposed or likely to be made;

- 1 (c) no service charges have been made, or are proposed or  
 2 likely to be made, in circumstances where it would be  
 3 reasonable to expect such charges to be made;
- 4 (d) there has been a failure to comply with a duty imposed  
 5 by or by virtue of section 11 of the *Property Service Charges*  
 6 *Act 1989* (tenants' contributions to be held in trust);
- 7 (e) the state of repair of the relevant premises (or a part of  
 8 them) or their management is likely to improve  
 9 significantly if a management order were made; or
- 10 (f) it is just and convenient in all the circumstances of the  
 11 case to vary or discharge the management order.

- 12 (4) The Commissioners may not discharge a management order by  
 13 reason only that the premises in respect of which the order was  
 14 made have ceased to be relevant premises —
- 15 (a) by becoming part of the functional land of a charity; or  
 16 (b) by reason of the landlord's interest in becoming vested in  
 17 an exempt landlord.”.

## 18 10 Insertion of new cross-heading

19 The 2011 Act is amended by inserting the following cross-heading immediately  
 20 above section 21 —

21 “*Miscellaneous provisions relating to all management orders*”.

## 22 11 Repeal and replacement of section 22

23 Section 22 of the 2011 Act is repealed and replaced with the following —

### 24 “22 Form and content of notices

- 25 (1) The Department may make regulations specifying —
- 26 (a) the form of any notices required or authorised to be  
 27 served under or in pursuance of any provision of this  
 28 Part;
- 29 (b) the particulars which any such notices must contain;  
 30 whether in addition to, or in substitution for, any  
 31 particulars required by virtue of the provision in  
 32 question.
- 33 Tynwald procedure – approval required.
- 34 (2) If the Department exercises the power conferred by subsection  
 35 (1), it must take such steps as it considers reasonable to notify  
 36 those likely to be affected by its exercise. “.



IN THE KEYS

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**HOUSING (MISCELLANEOUS PROVISIONS)  
(AMENDMENT) BILL 2021**

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A **BILL** to making further provision in relation to leasehold premises; to permit qualifying tenants to form a company through which to apply for a management order in respect of the premises of which they are tenants; to permit qualifying tenants of premises to apply for a management order in respect of the premises without regard to whether or not the management responsibilities are being satisfactorily discharged; and for connected purposes.

Leave to introduce given by the Keys  
on 24 November 2020.

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MR HOOPER

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27 APRIL 2021