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HOUSING (MISCELLANEOUS PROVISIONS)(AMENDMENT) BILL 2020

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HOUSING (MISCELLANEOUS PROVISIONS)(AMENDMENT) BILL 2020

A **BILL** to make further provision in relation to leasehold premises and to amend the Housing (Miscellaneous Provisions) Act 2011 in respect of Compulsory Purchases; 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:—

1 Short title

The short title of this Act is the Housing (Miscellaneous Provisions)(Amendment) Act 2020.

2 Commencement

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

3 Amendment of the 2011 Act

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

4 Amendment of section 16

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

«**“qualifying tenant”** - see section 25;»

«**“RTM company”** - see section 20A;»

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

«**“relevant RTM company”** means a RTM company —

- (a) the membership of which includes at least 2 qualifying tenants of the premises (or of any premises containing or contained in those premises) in respect of which the

RTM company makes a specific management application;

- (b) in relation to premises containing, or in which is contained, the premises of which the qualifying tenants referred to in paragraph (a) are tenants; and
- (c) which is not already the subject of a management order granted in respect of any premises;

(See also section 20A(2).);»

«“specific management application” – see section 17(1)(b);»

5 Amendment of section 17

Section 17 of the 2011 Act is amended —

- (a) by substituting the following for subsection (1) —

«(1) Either of the following may, in accordance with this Part, apply to the Commissioners for a management order —

- (a) the tenant of a flat contained in relevant premises (whose application must be referred to as a “**general management application**”); or
- (b) a relevant RTM company (whose application must be referred to as a “**specific management application**”) that complies with section 20D.

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

- (b) by inserting the following immediately after subsection (1) —

«(1A) The applications referred to in subsection (1) are, respectively, subject to the following provisions —

- (a) with respect only to a general management application —
 - (i) the application must not contain a request that the Commissioner appoint a specified person as manager; and
 - (ii) should they decide to make the management order, the Commissioners must select the manager in exercise of their sole discretion; and
- (b) with respect only to a specific management application —
 - (i) the relevant RTM company must request that it be appointed manager; and
 - (ii) should they decide to make the management order, the Commissioners must not appoint as manager any person other than the relevant RTM company.».

6 Amendment of section 18

Section 18 of the 2011 Act is amended —

- (a) by substituting the following for subsection (1) —
- «(1) Before submitting either a general management application or a specific management application in respect of any premises, the applicant must serve a notice (“**a management application notice**”) on —
- (a) the landlord; and
- (b) any other person by whom obligations relating to the management of the premises or any part of them are owed to the tenant under the tenancy.
- This is subject to subsection (3).»; and
- (b) in the portion of subsection (2) immediately before its paragraph (a), by inserting, between “A management application notice” and “must”, the following —
- «in respect of a general management application».

7 Amendment of section 19

Section 19 of the 2011 Act is amended —

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

8 Repeal and replacement of section 20

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

«20 Management orders

- (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

- 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 —
- (a) for rights and liabilities arising under contracts to which the manager is not a party to become the manager's rights and liabilities;
 - (b) for the manager 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 manager's appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made, or by all or any of those persons;
 - (d) for the manager's functions to be exercisable (subject to subsection (10)) either during a specified period or without limit of time.
- Nothing in this subsection limits the operation of subsection (8).
- (10) If they make a management order, the Commissioners may impose such conditions as they think fit, including suspending the order's operation on terms.
- (11) In a case where an application for a management order was preceded by the service of a management application notice, the Commissioners may, if they think fit, make such an order despite the fact that —
- (a) any period specified in the management application notice by virtue of section 18(2A) was not a reasonable period; or
 - (b) the notice failed in any other respect to comply with any requirement contained in section 18(2) or in any regulations applying to the notice under section 18(2)(d).

- (12) A management order is enforceable against any person deriving title from the landlord in respect of that person's interest in the premises to which the order relates but without prejudice to —
 - (a) section 29 of the *Registration of Deeds Act 1961* (registration of encumbrances affecting unregistered land); and
 - (b) section 31(4) of the *Land Registration Act 1982* (effect of transfer of registered land).

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

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

«RTM companies

20A RTM company: definition

- (1) A company is a RTM company if —
 - (a) it is a private company limited by guarantee and incorporated in the Island;
 - (b) its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage premises.
- (2) A company is not a relevant RTM company if another company is already the relevant RTM company in respect of the premises (or to any part of the premises) to which the first-mentioned company relates.
- (3) A RTM company ceases to be a RTM company if the freehold of any premises is conveyed or transferred to it. The time at which it so ceases is when the conveyance or transfer is executed and delivered.

20B RTM company: membership and regulations

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

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

20C Specific management application: further provision

A relevant RTM company must not make a specific management application made under section 17 unless it meets either of the following requirements —

- (a) where there are only two qualifying tenants of flats contained in the relevant premises on the date of application, the relevant RTM company's membership must include both tenants; or
- (b) in any other case, the membership of the relevant RTM company must on the date of application include a number of qualifying tenants of flats contained in the relevant premises which is not less than one-half of the total number of flats so contained.

20D Notice inviting participation

- (1) Before making a specific management application under section 17, a relevant RTM company must give notice to each person who, at the time when the notice is given, is a qualifying tenant of a flat contained in the premises.
- (2) A notice given under this section (a "notice of invitation to participate") must —
 - (a) state that the relevant RTM company intends to acquire the right to manage the premises;
 - (b) state the names of the members and officers of the relevant RTM company;
 - (c) invite the recipients of the notice to become members of the company; and
 - (d) contain such other particulars as may be prescribed.
 - Tynwald procedure – approval required.
- (3) A notice of invitation to participate must be accompanied by a copy of the articles of association of the relevant RTM company.
- (4) A notice of invitation to participate is not invalidated by its containing an inaccuracy in any of the particulars which are set out in it pursuant to this Part.

20E Specific management applications: notice to be served

- (1) Before making a specific management application under section 17, the relevant RTM company must serve a notice (a “management application notice”) on —
 - (a) the landlord;
 - (b) the managing agent; and
 - (c) any other person by whom obligations relating to the management of the premises or any part of them are owed to the tenant under the tenancy.
- (2) A notice given under this section must contain such details as may be prescribed.

Tynwald procedure – approval required.
- (3) The management application notice may not be given unless each person required to be given a notice of invitation to participate under section 20D has been given such a notice at least 14 days before.
- (4) The Commissioners may (whether on the hearing of a management application or not) —
 - (a) by order dispense with the requirement to serve a management application notice on a person if satisfied 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 —

- (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.

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.

20G

Discharge of management orders

(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;
 - (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;
 - (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);
 - (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; or
 - (f) it is just and convenient in all the circumstances of the case to vary or discharge the management order.
- (4) The Commissioners may not discharge a management order by reason only that the premises in respect of which the order was made have ceased to be relevant premises —
- (a) by becoming part of the functional land of a charity; or
 - (b) by reason of the landlord's interest in becoming vested in an exempt landlord.».

10 Insertion of new cross heading

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

«Miscellaneous provisions relating to all management orders».

11 Repeal and replacement of section 22

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

«22 Form and content of notices

- (1) The Department may make regulations specifying —
 - (a) the form of any notices required or authorised to be served under or in pursuance of any provision of this Part; and
 - (b) the particulars which any such notices must contain; whether in addition to, or in substitution for, any particulars required by virtue of the provision in question.
- Tynwald procedure - approval required.

- (2) If the Department exercises the power conferred by subsection (1), it must take such steps as it considers reasonable to notify those likely to be affected by its exercise. ».