



Isle of Man

Ellan Vannin

**EMERGENCY POWERS (AMENDMENT)
(NO. 2) BILL 2020**



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Index

Section	Page
<i>Introduction</i>	7
1 Short title.....	7
2 Commencement	7
<i>Amendment of the Emergency Powers Act 1936</i>	7
3 Emergency Powers Act 1936 amended.....	7
4 Emergency regulations: section 4 amended.....	8
5 Continuation of emergency regulations: section 4A inserted	9
<i>Provision about local elections</i>	9
6 Local elections postponed	9
SCHEDULE	11
POSTPONEMENT OF LOCAL ELECTIONS: CONSEQUENTIAL PROVISIONS	11

EMERGENCY POWERS (AMENDMENT) (NO. 2) BILL 2020

Explanatory Memorandum

1. This Bill is promoted by Mr Quayle MHK.
2. The Bill's purposes are threefold—
 - a. to replace section 4(3) of the Emergency Powers Act 1936, which at present provides for offences to be triable only by the High Bailiff, with a new subsection which will permit offences to be dealt with by any court of summary jurisdiction or by way of fixed penalty notice; and
 - b. to confer a power to make regulations to continue, in appropriate circumstances, any regulations made under section 4 in the period when a proclamation of emergency is in operation; and
 - c. to make permanent provision (in place of that made by regulations under the *Emergency Powers Act 1936*) for the deferment of local elections due to take place in April 2020.
3. *Clause 1* provides the short title of the resulting Act, which amends the Emergency Powers Act 1936 ("the 1936 Act"), while *clause 2* provides for the commencement of the resulting Act to be by way of an appointed day order made by the Council of Ministers. Such an order may make consequential, incidental, supplemental, transitional and transitory provision, including making modifications to enactments.
4. *Clause 3* introduces the amendments to the 1936 Act.
5. *Clause 4* amends section 4 of the 1936 Act as set out in paragraphs 6 to 9.
6. It dispenses with the proposition in subsection (1) that emergency regulations are made by order: the regulations will however continue to be made by the Governor in Council.
7. It inserts a new subsection (1A), whose purpose is to clarify the position where emergency regulations are in place during one period of emergency which is immediately followed by another the regulations can continue throughout the subsequent period or periods without being remade.
8. It also replaces the existing subsection (3) with a new provision which —
 - a. restates the existing law in relation to prosecution save that it permits the regulations under the section to make offences triable by any court of summary jurisdiction rather than just the High Bailiff;
 - b. makes it clear that the maximum fine that may be imposed is one of level 5 on the standard scale (i.e. £10,000): this is in fact the current

position as a result of several recent changes in levels of fines, but the replacement of the subsection offers an opportunity to restate the position with clarity; and

- c. provides a power for the regulations to make provisions about fixed penalties (not exceeding £250) for offences as alternatives to prosecution;
 - d. removes the prohibition on regulations changing court procedure, but inserts a requirement for the consent of the Deemsters in respect of any such change.
9. If the regulations make provision for fixed penalties they must also provide a right of appeal to a court of summary jurisdiction.
 10. *Clause 5* inserts a new section 4A into the 1936 Act, which will permit the Governor in Council to make continuation regulations to secure that provision made during the period of emergency can produce its intended effects. The effect is to permit emergency regulations to continue for 3 months after the end of the period of emergency if continuation regulations are made.
 11. *Clause 6 and the Schedule* make permanent provision in connection with the deferment of local elections from April 2020 to April 2021.
 12. The resulting Act will have no financial implications.
 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

EMERGENCY POWERS (AMENDMENT) (NO. 2) BILL 2020

1 **A BILL** to amend the Emergency Powers Act 1936 so as to amend the procedure
2 for emergency regulations, confer jurisdiction on courts of summary
3 jurisdiction generally over offences under the Act, to provide for the imposition
4 of fixed penalties, for the temporary continuation of emergency regulations at
5 the end of a state of emergency and to make provision postponing local
6 elections until 2021; 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:—

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Introduction

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1 Short title

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The short title of this Act is the Emergency Powers (Amendment) Act 2020.

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2 Commencement

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(1) This Act comes into operation on such day or days as the Council of Ministers may by order appoint.

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(2) An order under subsection (1) may contain such consequential, incidental, supplementary, transitional and transitory provision, including provision modifying or amending Manx enactments, as the Council of Ministers considers appropriate.

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Tynwald procedure – laying only.

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Amendment of the Emergency Powers Act 1936

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3 Emergency Powers Act 1936 amended

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The *Emergency Powers Act 1936* is amended in accordance with sections 4 and 5 below.

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4 Emergency regulations: section 4 amended

- (1) Section 4 is amended as follows.
- (2) In subsection (1) for “, by Order, to make regulations” substitute “to make regulations”.
- (3) After subsection (1) insert—
- “(1A) Where regulations are made under subsection (1) in respect of a period when a proclamation under section 3 is in force (“period A”), if a further proclamation under that section is made in respect of the same emergency in respect of a subsequent period (“period B”) which begins at the end of period A, or any subsequent period, section 31 of the *Legislation Act 2015* shall apply to the regulations as if—
- (a) they had been remade at the beginning of period B (and at the beginning of each subsequent period for which a proclamation of emergency is in operation in respect of the same emergency); and
- (b) in relation to period B, and any subsequent period for which a proclamation of emergency is in operation in respect of the same emergency—
- (i) for subsection (2) of that section there were substituted—
- “(2) The document is to be treated as it were laid before Tynwald at the beginning of the first sitting of the Court after the start of period B (and each subsequent period for which a proclamation of emergency is in operation in respect of the same emergency).”; and
- (ii) in subsection (3) the words “or the next subsequent sitting” were omitted.”.
- (4) For subsection (3) substitute—
- “(3) Regulations under this section may provide for offences under the regulations, or specified in them —
- (a) to be triable by a court of summary jurisdiction and punishable by a maximum of 3 months’ custody, a fine not exceeding level 5 on the standard scale, or both, together with the forfeiture of any goods or money in respect of which the offence has been committed; or
- (b) to be the subject of a fixed penalty not exceeding £250 to be imposed by persons authorised to do so by or under the regulations by means of a notice given to the person liable to pay such penalty and to provide for the procedure to be followed in relation to such penalty.

- 1 (3A) Regulations under this section—
- 2 (a) may not—
- 3 (i) without the consent of the Deemsters, alter the
- 4 procedure of a court in dealing with criminal
- 5 matters; or
- 6 (ii) provide for the imposition without trial of custody,
- 7 a fine or (except as provided in subsection (3)(b)) a
- 8 financial penalty; and
- 9 (b) must, if they make provision under subsection (3)(b),
- 10 provide for a right of appeal against a notice to a court of
- 11 summary jurisdiction.”.

12 **5 Continuation of emergency regulations: section 4A inserted**

13 After section 4 insert—

14 **4A Continuation of emergency regulations**

- 15 (1) This section applies where a proclamation of emergency is in
- 16 operation.
- 17 (2) If it appears to the Governor in Council that it is necessary to do
- 18 so in order to secure the intended effect of regulations under
- 19 section 4 after the period of emergency ends, the Governor in
- 20 Council may make regulations (“continuation regulations”).
- 21 Tynwald procedure – affirmative.
- 22 (3) Continuation regulations may provide for the continuation, for a
- 23 period of not more than 3 months from the end of the period of
- 24 emergency, and with or without modification, of any regulations
- 25 under section 4 which are in operation during the period of
- 26 emergency.
- 27 (4) Continuation regulations are, despite point 1 of the proviso to the
- 28 definition of “subordinate legislation” in section 19 of the *Human*
- 29 *Rights Act 2001*, subordinate legislation for the purposes of that
- 30 Act. 22.”.

31 *Provision about local elections*

32 **6 Local elections postponed**

- 33 (1) The elections due to be held, in accordance with section 3 of the *Local*
- 34 *Elections Act 1986*, on 23 April 2020 are postponed until 22 April 2021.
- 35 (2) Subsections (3) and (4) amend the *Local Elections Act 1986* in consequence
- 36 of the deferment in subsection (1).

- 1 (3) In section 3—
- 2 (a) in subsection (1) for “2004” substitute “2021”.
- 3 (b) in subsection (2), for “The Department” substitute “Subject to
- 4 subsection (3), the Department”.
- 5 (c) at the end insert —
- 6 | “(3) Subsection (2) does not apply to the elections to be held in 2021.”.
- 7 (4) In section 5 for “2004” substitute “2021”.
- 8 (5) The Schedule makes further provision in consequence of the
- 9 postponement in subsection (1).
- 10

SCHEDULE

POSTPONEMENT OF LOCAL ELECTIONS: CONSEQUENTIAL PROVISIONS

[Section 6(5)]

1 Continuation of tenure of office

- (1) Every person who is currently a member of a local authority remains in office until 1 May 2021, unless he or she earlier vacates office.
- (2) Subparagraph (1) does not apply to the parish districts of Arbory and Rushen.

2 Amendment to the Douglas (Alteration of Wards and Number of Members) Scheme 2018

- (1) The Douglas (Alteration of Wards and Number of Members) Scheme 2018 is amended as follows.
- (2) In paragraph 4 (elections of the Borough of Douglas), for “2020” substitute **2021**.

3 Amendment to the Douglas (Alteration of Wards and Number of Members) Order 2019

- (1) The Douglas (Alteration of Wards and Number of Members) Order 2019 is amended as follows.
- (2) For article 4(3)(b) (commencement of scheme), substitute —
| **(b)** for all other purposes on 22 April 2021.

4 Amendment to the Port Erin (Number of Members) Order 2019

- (1) The Port Erin (Number of Members) Order 2019 is amended as follows.
- (2) For article 4(3)(b) (commencement of scheme), substitute —
| **(b)** for all other purposes on 22 April 2021.

5 Amendment to the Port St Mary (Number of Members) Order 2019

- (1) The Port St Mary (Number of Members) Order 2019 is amended as follows.
- (2) For article 4(3)(b) (commencement of scheme), substitute —
| **(b)** for all other purposes on 22 April 2021.

6 Amendment to the Arbory and Rushen (Local Government District) Order 2019

- (1) The Arbory and Rushen (Local Government District) Order 2019 is amended as follows.
- (2) In article 5 (commissioners of the Arbory and Rushen parish district) —
- (a) for paragraph (2) substitute —
- 5**(2) On and after 1 May 2021, there shall be 6 Commissioners.
- (2A) There shall be 10 Commissioners from the appointed day to 30 April 2021 (inclusive).
- This paragraph shall cease to have effect on 1 May 2021. **5**;
- (b) for paragraph (4), substitute —
- 5**(4) The first Commissioners for the Arbory and Rushen Parish District take up office on the appointed day and hold office for a 1 year term. **5**;
- (c) after paragraph (4), insert —
- 5**(5) On and after 1 May 2021, Commissioners for the Arbory and Rushen Parish District who take up office on the 1 May 2021 shall hold office for a 4 year term (and their successors shall take up office in each fourth succeeding year, other than when filling a casual vacancy in their number). **5**.
- (3) For article 9(2) (division of Arbory and Rushen district into wards), substitute —
- 9**(2) On and after 1 May 2021, each ward shall elect 3 of the Commissioners.
- (2A) Each ward shall be represented by 5 Commissioners from the former authorities that make up that ward on the appointed day for the period up to 30 April 2021 (inclusive).
- This paragraph shall cease to have effect on 1 May 2021. **9**.

A **BILL** to amend the Emergency Powers Act 1936 so as to amend the procedure for emergency regulations, confer jurisdiction on courts of summary jurisdiction generally over offences under the Act, to provide for the imposition of fixed penalties and for the continuation of emergency regulations for 3 months at the end of a state of emergency; and for connected purposes.

MR QUAYLE

APRIL 2020

Approved for introduction into
the House of Keys on 2 April
2020