



Isle of Man

Ellan Vannin

AT 10 of 2019

**TOWN AND COUNTRY PLANNING
(AMENDMENT) ACT 2019**



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TOWN AND COUNTRY PLANNING (AMENDMENT) ACT 2019

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AN ACT to amend the Town and Country Planning Act 1999 to make provision for national policy directives; to clarify the matters for which provision may be made in a development procedure order; to clarify the circumstances in which an application for planning approval may be referred to the Council of Ministers; to require that any independent inspector's report relevant to such a referral be laid before Tynwald; to provide an enabling power for a community infrastructure levy; to provide for the constitution of the planning committee; to amend section 40 of that Act; to define general importance; 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:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Town and Country Planning (Amendment) Act 2019.

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 considers 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.

DIVISION 1 – NATIONAL POLICY DIRECTIVES

4 Section 2 amended

- (1) In section 2(2A) (development plan), after “*Coastline Management Act 2005*”, insert **2A** and any national policy directive made under section 2A (national policy directives) **2A**.
- (2) After subsection (2A), insert –
- 2A** (2B) Having taken a national policy directive into account in the preparation or revision of a development plan, the Cabinet Office shall provide reasons and recommend to the Council of Ministers that the national policy directive –

(a) remains in operation; or

(b) is revoked. **2A**.

5 Section 2A inserted

After section 2 (development plan), insert –

2A National policy directives

- (1) The Council of Ministers may, whenever it is satisfied that it is in the national interest, by order, issue a national planning policy directive (“national policy directive”).

(2) Before making an order under subsection (1) the Council of Ministers shall conduct a public consultation and have regard to the responses to the consultation.

(3) A national policy directive has effect for a period of 5 years or for such shorter period as may be specified in the order under which it is issued.

(4) The Council of Ministers shall by regulations make further provision about the making of national policy directives under this section.

- (5) A national policy directive shall —
- (a) be for a strategic and defined purpose;
 - (b) include reasons for the policy set out in the directive;
 - (c) include a statement of the anticipated impact and consequences of the policy set out in the directive; and
 - (d) for the purposes of section 10(4) (determination of planning applications), include justification for the policy set out in the directive having greater weight than the matters referred to in paragraphs (a), (b) or (c) of that subsection.
- (6) The Council of Ministers shall arrange for the publication of a national policy directive.
- (7) In the event of any inconsistency between a national policy directive and the matters referred to in paragraphs (a), (b) and (c) of section 10(4) (determination of planning applications), for the purposes of that subsection, the Department shall give greater weight to the relevant provisions of the national policy directive.
- (8) The Cabinet Office shall prepare a report to be laid before Tynwald on the third anniversary of this section coming into operation and every third anniversary thereafter.
- (9) The report referred to in subsection (8) shall include —
- (a) a copy of every national policy directive which has been issued or has expired —
 - (i) in the case of the first report, since the coming into operation of this section;
 - (ii) in the case of every subsequent report, since the date of the last report;
 - (b) where a development plan has been prepared or revised subsequent to a national policy directive, the recommendation of the Cabinet Office under section 2(2B);
 - (c) an assessment by the Cabinet Office as to whether the impact and consequences of the policy were correctly anticipated.
- (10) The Council of Ministers may, by order, amend subsection (5) but may not omit any of paragraphs (a) to (d) of that subsection as originally enacted.
- (11) For the purposes of subsection (6), “publication” means —
- (a) publication —
 - (i) in one or more newspapers published and circulating within the Island; and
 - (ii) on a website maintained or approved for the purpose by the Cabinet Office and in respect of which

- reasonable steps have been taken to inform the public of how it may be accessed; and
- (b) if appropriate, taking other reasonable steps to bring the purport of the national policy directive to the attention of the public or of persons likely to be affected by it. **22**.

6 Section 5 amended

In section 5 (validity of plans) —

- (a) in the section heading, after “plans” insert **23** etc **22**;
- (b) in subsection (1) after paragraph (b), insert —
- 23** or
- (c) any national policy directive, **22**; and
- (c) for subsection (2), substitute —

23 (2) If any person aggrieved by the development plan or any strategic plan or area plan comprised in the development plan, or by any revision or repeal of a strategic plan or area plan or by any national policy directive, desires to question the validity of the plan or of the revision or repeal or the national policy directive on a ground specified in subsection (3), the person may, within 6 weeks of the publication of the plan, revision or repeal or the national policy directive (as the case may be), apply to the High Court.

(3) The grounds referred to in subsection (2) are, in relation to the development plan or any strategic plan or area plan comprised in the development plan, or by any revision or repeal of a strategic plan or area plan or by any national policy directive (as the case may be) —

- (a) that it is not within the powers conferred by this Part; or
- (b) that any requirement of this Part has not been complied with in relation to the preparation, adoption, revision or repeal of the plan or the making of the national policy directive.

(4) On an application under subsection (2), the High Court —

- (a) may by interim order wholly or in part suspend the operation of the plan, of the revision or repeal, or the national policy directive either generally or in so far as it affects the property of the applicant, until the final determination of the proceedings;
- (b) if satisfied that the plan, revision or repeal or the national policy directive is wholly or to any extent outside the powers conferred by this Part, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of this Part, may wholly or in part quash the plan, the revision or repeal or the national

policy directive either generally or in so far as it affects any property of the applicant. **22**.

7 Section 10 amended – national policy directives

In section 10(4) (determination of planning applications), after paragraph (a), insert –

23 (ab) any relevant national policy directive under section 2A; **22**.

8 Section 45 amended – national policy directives

After the definition of “land” in section 45(1) (interpretation), insert –

24 “national policy directive” means a national policy directive issued under section 2A(1); **22**.

DIVISION 2 – DEVELOPMENT PROCEDURE ORDERS

9 Section 10 amended – development procedure orders

(1) In section 10(6) (determination of planning applications – provisions which may be made in a development procedure order), after paragraph (e) insert –

25 (f) the grant of minor changes to a planning approval. **22**.

(2) After section 10(6), insert –

26 (6A) If a development procedure order makes provision for the grant of minor changes to a planning approval, the order shall include provision for –

- (a) the procedure for the determination of applications for minor changes; and
- (b) the making of orders for the payment of costs in connection with such an application. **22**.

DIVISION 3 – REFERRAL OF APPLICATIONS TO THE COUNCIL OF MINISTERS

10 Section 11 amended

(1) For section 11(1) (reference of applications to Council of Ministers), substitute –

27 (1) If –

- (a) it appears to the Department that an application made to it for planning approval is an application to which subsection (1A) applies, it shall refer the application to the Council of Ministers and the Council may direct that the Council shall determine the application;

- (b) it appears to the Council of Ministers that an application made to the Department for planning approval –
- (i) is an application to which subsection (1A) applies; and
 - (ii) the application has not been referred to it under paragraph (a),
- the Council of Ministers may direct that the application shall be referred to and determined by the Council.
- (1A) This subsection applies to an application which appears to the Department or to the Council of Ministers, as the case may be, –
- (a) to raise considerations of general importance to the Island; or
 - (b) that for some other reason ought not to be determined by the Department. ²².
- (2) In section 11(2)(a), after “the decision of the Council of Ministers”, insert “and any relevant independent inspector’s report”.

DIVISION 4 – COMMUNITY INFRASTRUCTURE LEVY

11 Section 13A inserted

After section 13 (agreements regulating development of land), insert –

²³ *Community Infrastructure Levy*

13A Community infrastructure levy

P2008/29/205-223 and drafting

- (1) The Council of Ministers shall, with the concurrence of the Treasury, make regulations providing for the imposition of a charge to be known as Community Infrastructure Levy (“CIL”).
- (2) The Council of Ministers may delegate to any member or officer of the Department, or any other person, its functions under this section, other than the power to make regulations under subsection (1).
- (3) A delegation by the Council of Ministers under subsection (2) may impose conditions with which a person exercising a function under the delegation must comply.
- (4) Regulations made under subsection (1) may include provision about the matters in respect of which CIL may be charged and the procedures to be followed in connection with CIL.
- (5) Without limiting subsection (4), the regulations may make provision for –

- (a) procedures to be followed by the Council in proposing to begin charging CIL;
- (b) procedures to be followed by the Council in relation to charging CIL;
- (c) procedures to be followed by the Council in proposing to stop charging CIL;
- (d) consultation;
- (e) the form and content of documents;
- (f) setting rates or other criteria;
- (g) the collection of CIL and provision for payment on account or by instalments;
- (h) the repayment of CIL (with or without interest);
- (i) the matters to which received CIL may be applied;
- (j) the terms and conditions of appointment and remuneration of any person in relation to charging, collecting or the enforcement of CIL;
- (k) the reimbursement of expenditure incurred by the Council (including provision for enforcement);
- (l) combining procedures in connection with CIL with procedures for another purpose of the Council (including a purpose of the Council in another capacity);
- (m) procedures to be followed in connection with actual or potential liability for CIL;
- (n) procedures to be followed in respect of an exemption from CIL or a reduction of CIL;
- (o) how the following powers are to be used, or are not to be used —
 - (i) section 13 (agreements regulating development of land); and
 - (ii) section 109A of the *Highways Act 1986* (agreements as to execution of works);
- (p) the exercise of any other power relating to planning or development;
- (q) permitting a person to exercise a discretion in respect of any matters specified in the regulations;
- (r) giving guidance by the Council about any matter connected with CIL; and
- (s) the contravention of the regulations to be an offence and prescribe a penalty on summary conviction —

- (i) where the offence comprises a failure to pay CIL, a fine not exceeding twice the amount of the CIL due; and
 - (ii) in any other case a fine not exceeding level 4 on the standard scale.
- (6) Without limiting subsection (4), CIL regulations may —
- (a) make provision that applies generally or only to specified cases, circumstances or areas;
 - (b) make different provision for different cases, circumstances or areas;
 - (c) provide, or allow a charging schedule to provide, for exceptions;
 - (d) confer, or allow a charging schedule to confer, a discretionary power on the Council or another specified person;
 - (e) apply an enactment, with or without modifications; and
 - (f) make incidental, consequential, supplementary, transitional or transitory provision or savings (and may include provision or savings disapplying or modifying the effect of or amending an enactment).²².

12 Section 45 amended — Community Infrastructure Levy

After the definition of “building preservation notice” in section 45(1) (interpretation), insert —

²³ “CIL” has the meaning given in section 13A(1);²².

DIVISION 5 — PLANNING COMMITTEE

13 Part 4A inserted

After Part 4 (enforcement of control) insert —

²³ PART 4A – THE PLANNING COMMITTEE

Planning Committee

39B Definitions for sections 39C to 39G

In sections 39C to 39G —

“**planning committee**” means the planning committee constituted under section 39C; and

“old planning committee” means the body of persons known as the “Planning Committee” to which certain functions of the Department under this Act and any orders or regulations made under it were delegated immediately before the enactment of the *Town and Country Planning (Amendment) Act 2019*.

39C Planning committee

- (1) Subject to this section, the Council of Ministers shall, by order (“the constitution order”), constitute a committee (the “planning committee”) to carry out any of the functions under this Act to which subsection (5) applies.
- (2) The constitution order may in particular provide for —
 - (a) the constitution of the committee;
 - (b) the terms of office of members of the committee;
 - (c) termination of membership of the committee;
 - (d) committee proceedings and procedure;
 - (e) without limiting paragraph (d) —
 - (i) the appointment of a chairperson;
 - (ii) voting procedures; and
 - (iii) the quorum of the committee; and
 - (f) such transitional arrangements as the Council of Ministers considers necessary or expedient.
- (3) The Council of Ministers shall appoint the members of the planning committee.
- (4) Schedule 2 to the *Government Departments Act 1987* applies to the planning committee as it applies to a Department and accordingly references in that Schedule to a Department shall be read as including a reference to the planning committee.
- (5) This subsection applies to any function —
 - (a) performed by the old planning committee and specified in the constitution order;
 - (b) which the Minister authorises the planning committee to exercise under section 3 of the *Government Departments Act 1987*; or
 - (c) which is transferred to the planning committee by an order under Schedule 2 to the *Government Departments Act 1987*.
- (6) The Council of Ministers shall arrange for the publication of an authorisation referred to in subsection (5)(b) in a manner the Council considers will bring it to the attention of those likely to be affected by it.

39D Powers to delegate not affected

To avoid doubt section 39C does not prevent —

- (a) the appointment of a deputy, in accordance with section 80 of the *Interpretation Act 2015*, to perform any planning functions of the Minister instead of the planning committee; or
- (b) the authorisation under section 3 of the *Government Departments Act 1987* of a person other than the planning committee to exercise any function of the Department.

39E Old planning committee taken to be planning committee

- (1) From the commencement of this Part, until an order is made under section 39C(1), the old planning committee is taken to be the planning committee.
- (2) A person who immediately before the commencement of this Part was appointed to the old planning committee is to be treated as having been appointed to the planning committee on the same terms and conditions as applied immediately before that commencement.
- (3) This section does not prevent the terms and conditions being varied after that commencement.
- (4) A reference in any enactment or document in force or created before the commencement of this Part to the old planning committee is to be taken to be a reference to the planning committee.

39F Transitional provision about existing applications

- (1) This section applies if —
 - (a) an application under this Act was made before the commencement of this Part; and
 - (b) the application is to be determined by the old planning committee.
- (2) The application shall, on or after commencement of this Part, be determined by the planning committee in the same way as it would have been determined by the old planning committee.

39G Transitional provision about existing consents and determinations

On and after the commencement of this Part, a planning approval, consent or other determination under this Act given by the old planning

committee continues to have effect as if it had been given by the planning committee. **22**.

14 Section 45 amended — planning authority and planning committee

- (1) Section 45 (interpretation) is amended as follows.
- (2) In subsection (1), after the definition of “planning approval” insert —
 - 23** “**planning authority**” has the meaning given by subsection (3);
 - “**planning committee**” means the committee constituted under section 39C; **22**.
- (3) After subsection (2) insert —
 - 24** (3) A reference in a public document to a “planning authority” is a reference to any person responsible for determining an application for planning approval, giving a consent or otherwise making a determination in relation to a matter under this Act or an enactment that relates to town and country planning.

Here “person” includes the planning committee constituted under section 39C(1). **22**.

DIVISION 6 — OUTSIDE ORGANISATIONS

15 Section 40 amended

In section 40 (involvement of outside organisations in planning) —

- (a) in subsection (1), for “Council of Ministers shall”, substitute **25** Council of Ministers may **22**; and
- (b) in subsection (2), for “Cabinet Office must”, substitute **26** Cabinet Office may **22**.

DIVISION 7 — GENERAL IMPORTANCE

16 Section 45 amended — general importance

After the definition of “erection” in section 45(1) (interpretation), insert —

27 “**general importance**” has the meaning given in section 45A; **22**.

17 Section 45A — inserted

After section 45 (interpretation), insert —

28 45A General importance

- (1) In this Act a consideration or matter is of “general importance” if each of the following paragraphs applies —

- (a) subject to subsection (2) this paragraph applies to a consideration or matter which does not accord with the use for which the land is zoned as specified in —
 - (i) the relevant area plan;
 - (ii) the relevant local plan; or
 - (iii) Isle of Man Planning Scheme (Development Plan) Order 1982¹;
- (b) this paragraph applies to a consideration or matter which relates to —
 - (i) in the case of a commercial development, a site of 1,000 square metres or more;
 - (ii) in the case of a residential development, a development of more than 30 homes; or
 - (iii) in any other case, a development site of more than one hectare; and
- (c) this paragraph applies to a consideration or matter for which an environmental impact assessment is required under —
 - (i) any enactment;
 - (ii) a development plan;
 - (iii) a national policy directive; or
 - (iv) a planning policy statement.

- (2) A consideration or matter to which subsection (1)(a) applies, in respect of which there is a relevant national policy directive, is not a consideration or matter of general importance.
- (3) The Council of Ministers may issue guidance about the meanings of any of the terms in subsection (1).
- (4) Regard must be had to any guidance issued under subsection (3) in interpreting references to those terms.
- (5) The Council of Ministers may revise guidance issued under subsection (3) and a reference to guidance includes a reference to revised guidance.
- (6) Guidance issued under subsection (3) must be published by the Council of Ministers in a manner the Council considers will bring it to the attention of those likely to be affected by it.
- (7) The Council of Ministers may by order —
 - (a) amend subsection (1);

¹ GC140/82

- (b) make further provision, or amend or repeal existing provision, about a consideration or matter which is, and is not, within subsection (1).
- (8) An order under subsection (7) may amend this Act. **22**.

PART 3 — GENERAL

18 Consequential amendments

In section 44 of the *Town and Country Planning Act 1999* (Tynwald control of orders and regulations) —

- (a) for subsection (1), substitute —
 - 23** (1) Development orders, orders under sections 2A(10), 6(3)(e) or (f), 45A(7) and regulations under this Act may not come into operation unless they are approved by Tynwald. **22**;
 - (b) in subsection (2), after “A development procedure order”, insert **23** and an order made under section 39C(1)
 - 22** after subsection (3), insert —
 - “(4) An order under section 2A(1) may not come into operation unless a draft of the proposed order has been laid before a sitting of Tynwald and that draft has been approved at a subsequent sitting of Tynwald.”.

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