

**Isle of Man**

*Ellan Vannin*

SD No.2015/0150

**TRANSFER OF PLANNING AND  
BUILDING CONTROL FUNCTIONS ORDER  
2015**





## TRANSFER OF PLANNING AND BUILDING CONTROL FUNCTIONS ORDER 2015

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Statutory Document No. 2015/0150

*Government Departments Act 1987*

## TRANSFER OF PLANNING AND BUILDING CONTROL FUNCTIONS ORDER 2015

*Approved by Tynwald:**Coming into Operation:**1 June 2015*

The Governor in Council makes the following Order under Schedule 2 of the Government Departments Act 1987.

### **1 Title**

This Order is the Transfer of Planning and Building Control Functions Order 2015.

### **2 Commencement**

If approved by Tynwald, this Order comes into operation on 1 June 2015.

### **3 Planning and building control functions transferred**

(1) The functions of the Department of Infrastructure so far as relating to planning, other than planning policy, and building control, are transferred to the Department of Environment, Food and Agriculture.

This is subject to the following qualification.

(2) The function of the Department of Infrastructure under section 3(2) of the *Acquisition of Land Act 1984* (consultation by the Governor with that Department on the appointment of arbitrators) is transferred to the Treasury, and accordingly in that subsection for “the Department of Infrastructure” substitute **the Treasury**.

(3) In consequence of paragraph (1) the enactments specified in Part 1 of Schedule 1 are amended as set out in Part 2 of that Schedule.

### **4 Saving**

For the avoidance of doubt, nothing in this Order affects the continuing validity of provision made, before it comes into operation, under any of the enactments amended by Schedule 1.

**5 Transitional provisions**

Schedule 2 contains transitional provisions which apply in connection with the transfer of functions in article 3.

**6 Secondary legislation**

- (1) So far as is necessary in consequence of the transfer of functions and the amendments contained in Part 2 of Schedule 1, references to the Department of Infrastructure (however expressed) in secondary legislation made or having effect under the enactments amended in that Part are to be read as references to the Department of Environment, Food and Agriculture.
- (2) Paragraph (1) does not apply to the extent that contrary provision is made in any other public document made after this Order.

MADE 13<sup>th</sup> April 2015

  
W GREENHOW  
*Chief Secretary*

## SCHEDULE 1

[Article 3(3)]

## ENACTMENTS AMENDED IN CONSEQUENCE OF THE TRANSFER

## PART 1 – THE ENACTMENTS

**1 Enactments in respect of which functions are transferred**

The enactments referred to in article 3(3) are—

- the *Acquisition of Land Act 1984*;
- the *Building Control Act 1991*;
- the *Tree Preservation Act 1993*;
- the *Sewerage Act 1999*;
- the *Town and Country Planning Act 1999*;
- the *Coastline Management Act 2005*;
- the *Local Government Act 2006*; and
- the *Housing (Miscellaneous Provisions) Act 2011*.

## PART 2 – AMENDMENTS

*Introduction***2 Amendment of enactments**

The enactments listed in Part 1 are amended in accordance with this Part.

*Acquisition of Land Act 1984***3 Schedule 1 amended**

At the end of Part II of Schedule 1 (certification of alternative development value) insert —

7. In this Part “the Department” means the Department of Environment, Food and Agriculture. 22.

*Building Control Act 1991***4 Building Control Act 1991 amended**

The *Building Control Act 1991* is amended as follows.

**5 Section 1(1) amended**

In section 1(1) for “The Department of Infrastructure” substitute **“The Department of Environment, Food and Agriculture”**.

**6 Section 35(1) amended**

In section 35(1) —

(a) for the definition of “the Department” substitute —

**“the Department”** means the Department of Environment, Food and Agriculture; **and**

(b) for the definition of “**planning approval**” substitute —

**“planning approval”** has the meaning given by section 45(1) of the Town and Country Planning Act 1999. **and**.

*Tree Preservation Act 1993***7 Tree Preservation Act 1993 amended**

- (1) The *Tree Preservation Act 1993* is amended as follows.
- (2) In section 2(1) omit “after consultation with the planning authority”.
- (3) In section 4(4)(c)(i) after “the planning authority” insert **“or the Department”**.
- (4) Section 5(4A) is repealed.
- (5) Section 12, which is spent, is repealed.

*Sewerage Act 1999***8 Sewerage Act 1999 amended**

- (1) The *Sewerage Act 1999* is amended as follows.
- (2) In section 31 for “the Department of Infrastructure” wherever occurring substitute **“the Department of Environment, Food and Agriculture”**.
- (3) In section 33—
  - (a) in subsection (1)(b) omit “the Department of Infrastructure, having consulted”; and
  - (b) in subsection (2) for “the Department of Infrastructure” substitute **“the Department of Environment, Food and Agriculture”**.



*Town and Country Planning Act 1999***9 Town and Country Planning Act 1999 amended**

The *Town and Country Planning Act 1999* is amended as follows.

**10 Section 1 amended**

In section 1(1) omit “(“the Department”)”.

**11 Section 2 amended**

In section 2 for “the Department” (wherever occurring) substitute **the** Department of Infrastructure **the**.

**12 Section 3 amended**

(1) Section 3 is amended as follows.

(2) For subsections (1) and (2) substitute —

**(1)** The Department of Infrastructure may issue one or more statements of policy (“**planning policy statements**”) specifying the manner in which applications under Part 2 or 3 of such descriptions as are specified in the statement will be dealt with.

**(2)** The Department of Infrastructure may vary or withdraw a planning policy statement by a further statement. **the**.

(3) In subsections (2A) and (3) for “the Department” substitute **the** Department of Infrastructure **the**.

**13 Section 4 amended**

In section 4 for “the Department” (in both places) substitute **the** Department of Infrastructure **the**.

**14 Section 6 amended**

(1) Section 6 is amended as follows.

(2) In subsection (3)—

(a) in paragraph (d) for “the Department of Environment, Food and Agriculture” substitute **the** Department **the**; and

(b) in paragraphs (e) and (f) for “a development order” substitute **an** order made by the Department **the**.

**15 Section 8 amended**

(1) Section 8 is amended as follows.

- (2) For subsections (1) and (2) substitute —
- ❖(1) The Department of Infrastructure must by order (in this Act called a “**development order**”) provide for the grant of planning approval.
  - (2) A development order may itself grant planning approval —
    - (a) for development specified in the order, or
    - (b) for development of a class specified in the order.
  - (2A) In relation to cases for which a development order does not itself grant planning approval, the Department may make an order (a “**development procedure order**”) specifying the procedure to be followed on an application to the Department for the grant of planning approval. ❖.
- (3) For subsection (5) substitute—
- ❖(5) If a development order grants planning approval under subsection (2)(b), the order may enable the Department of Infrastructure to direct that the order is not to apply—
    - (a) in relation to development in a particular area; or
    - (b) in relation to any particular development. ❖.
- (4) After subsection (6) insert —
- ❖(6A) A development order may make provision for the procedure for the determination of applications required by a condition imposed on the grant of planning approval by or under the order. ❖.
- (5) In subsection (7) for the words preceding “provide for the granting of planning approval” substitute ❖ The Department may by order ❖.

## 16 Section 9 amended

In section 9(1)(a) after “development” insert ❖ procedure ❖.

## 17 Section 10 amended

- (1) Section 10 is amended as follows.
- (2) In subsection (1) for “the development order” substitute ❖ a development order and any development procedure order ❖.
- (3) In subsection (4)(c) after “a development order” insert ❖ or a development procedure order ❖.
- (4) In subsection (5) for “development order” substitute ❖ development procedure order ❖.
- (5) In subsection (6) —

- (a) in the opening words after “development” insert **“a development procedure order”**; and
- (b) in paragraph (e) after “development order” insert or **“a development procedure order”**.

## 18 Section 11 amended

- (1) Section 11 is amended as follows.
- (2) In subsection (3) for “a development order” substitute **“a development procedure order”**.
- (3) For subsection (5) substitute —
  - (5)** The provisions of —
    - (a) this Part;
    - (b) any relevant development order; and
    - (c) any relevant development procedure order,
 apply, in the same way as they apply to any other application for planning approval to—
    - (i) any application which is the subject of a direction under subsection (1); or
    - (ii) an application to which subsection (3) applies.
 This subsection is subject to the provision made by subsections (1) to (4). **“**

## 19 Section 12 amended

In section 12(3) for “A development order may” substitute **“A development procedure order may”**.

## 20 Section 14 amended

For section 14(1) substitute —

- (1)** The Protected Buildings Register, a register of buildings of special architectural or historic interest, previously maintained by the Department of Infrastructure, is to be maintained, after the coming into operation of the Transfer of Planning and Building Control Functions Order 2015, by the Department. **“**

## 21 Section 15 amended

For section 15(5) substitute —

- (5)** The Department must make regulations providing for —
  - (a) applications to the Department for registered building consent, and

(b) applications under paragraph 3 of Schedule 3, and the determination of such applications.

The regulations may also make provision for the exercise of functions in connection with those applications, and for appeals against decisions on such applications. 22.

## 22 Section 16 amended

In section 16(3)(b) for “Department” substitute 23 relevant Department 22.

## 23 Section 18 amended

In section 18 for “Department” (wherever occurring) substitute 23 Department of Infrastructure 22.

## 24 Section 19 amended

In section 19(2) for “Department” substitute 23 Department of Infrastructure 22.

## 25 Section 21 repealed

Section 21 (financial assistance), which has been superseded by section 6(1) of the Housing (Miscellaneous Provisions) Act 2011, is repealed.

## 26 Section 22 amended

(1) Section 22 is amended as follows.

(2) For subsection (1) substitute—

23(1) A relevant Department may make regulations restricting or regulating the display of advertisements so far as it appears to that Department to be expedient in the interest of amenity or public safety. 22.

(3) In subsection (4) for “Department” substitute 23 Department of Infrastructure 22.

## 27 Section 38 amended

In subsection (1) for “the Department” substitute 23 a relevant Department 22.

## 28 Section 40 amended

(1) Section 40 is amended as follows.

(2) In subsection (1) after “a body” insert 23 (“the consultative body”) 22.

(3) In subsection (2) —

- (a) for “The Department shall consult with the said body” substitute **“The Department of Infrastructure must consult the consultative body”**; and
  - (b) for “it appears to the Department” substitute **“it appears to that Department”**.
- (4) For subsection (3) substitute –
- “(3) An order made by the Department of Infrastructure must –**
    - (a) designate voluntary organisations in the Island appearing to that Department to be concerned with the environment; and
    - (b) require the relevant Department, in exercising any functions under this Act which are specified in the order, to have regard to any representations which are made, in such circumstances as are so specified, by organisations so designated.

## 29 Section 42 amended

- (1) Section 42 is amended as follows.
- (2) In subsection (1)–
  - (a) for “The Department may” substitute **“A relevant Department may”**; and
  - (b) for “the Department relating to any of its functions” substitute **“that Department relating to any of its functions”**.
- (3) In subsection (2) –
  - (a) for paragraph (a) substitute –
    - “(a) a relevant Department may destroy any of its documents if it has recorded them in accordance with subsection (1);”**
  - (b) in paragraph (b) for “officer of the Department” substitute **“officer of the Department by which the document was destroyed”**.
- (4) In subsection (3) for “The Department shall” substitute **“A relevant Department must”**.
- (5) In subsection (4) in the definition of “document” for “the Department” substitute **“a relevant Department or any other body exercising functions (at any time) under this Act”**.
- (6) In subsection (5) for “the Department” substitute **“a relevant Department”**.

## 30 Section 43 amended

- (1) Section 43 is amended as follows.

- (2) In subsection (1) —
- (a) in the words preceding paragraph (a), for “the Department” substitute **“a relevant Department”**;
  - (b) in paragraph (f), for “the Department” substitute **“the relevant Department”**.
- (3) In subsection (3) for “the Department” substitute **“a relevant Department”**.
- (4) In subsection (4) for “the Department’s” substitute **“the relevant Department’s”**.

### 31 Section 43A inserted

After section 43 insert —

#### **43A Consultation between relevant Departments**

The Department or the Department of Infrastructure (as the case requires) must consult the other Department before making —

- (a) a planning policy statement;
- (b) an order under section 6(3)(e) or (f) (uses which do not require planning approval);
- (c) a development order;
- (d) a development procedure order;
- (e) an order under section 18(1);
- (f) an order under section 40 (consultation with specified voluntary environmental organisations);
- (g) regulations under any provision of Part 2 or Part 3. **22**.

### 32 Section 44 substituted

For section 44 substitute —

#### **44 Tynwald control of orders and regulations**

- (1) Development orders, orders under section 6(3)(e) or (f) and regulations under this Act may not come into operation unless they are approved by Tynwald.
- (2) A development procedure order must be laid before Tynwald as soon as practicable after it is made, and if Tynwald, at the sitting before which it is laid or the next following sitting, resolves that it should be annulled, it shall cease to have effect.

- (3) An order under section 18(1) (designation of conservation areas) must be laid before Tynwald as soon as practicable after it is made. ~~22~~.

### 33 Section 45 amended

- (1) Section 45 is amended as follows.
- (2) In subsection (1) —
- (a) for the definition of “the Department” substitute —
- ~~22~~ **“the Department”** means the Department of Environment, Food and Agriculture; ~~22~~;
- (b) for the definition of “planning approval” substitute —
- ~~22~~ **“planning approval”** means approval authorising the carrying out of development under Part 2; ~~22~~;
- (c) in the definition of “regulations” for “the Department” substitute ~~22~~ a relevant Department ~~22~~; and
- (d) at the appropriate point in the alphabetical list insert the following definitions—
- ~~22~~ **“development order”** has the meaning given by section 8(1); ~~22~~;
- ~~22~~ **“development procedure order”** has the meaning given by section 8(2A); ~~22~~; and
- ~~22~~ **“relevant Department”** means the Department or the Department of Infrastructure (as the case requires); ~~22~~.
- (3) In subsection (2) —
- (a) for “the Department” in the words preceding paragraph (a) substitute ~~22~~ a relevant Department ~~22~~; and
- (b) in paragraphs (b) and (c) for “the Department” substitute ~~22~~ the relevant Department ~~22~~.

### 34 Schedule 1 amended

In Schedule 1 for “the Department” wherever occurring substitute ~~22~~ the Department of Infrastructure ~~22~~.

### 35 Schedule 2 amended

In paragraph 2(2)(b) omit ~~22~~ of the Department ~~22~~.

*Coastline Management Act 2005*

### 36 Repeal of section 6

Section 6 is repealed.

*Local Government Act 2006***37 Local Government Act 2006 amended**

The *Local Government Act 2006* is amended as follows.

**38 Section 17 amended**

In section 17(1) for “the Department” substitute ~~the~~ the Department of Environment, Food and Agriculture; ~~the~~.

**39 Schedule 1 amended**

(1) In paragraph 1 after the definition of “building control functions” insert –

~~“DEFA”~~ means the Department of Environment, Food and Agriculture; ~~the~~.

(2) Throughout the Schedule for “the Department” substitute ~~the~~ DEFA ~~the~~.

(3) In paragraph 4 for “the Civil Service Commission” (wherever occurring) substitute ~~the~~ the Public Services Commission ~~the~~.

*Housing (Miscellaneous Provisions) Act 2011***40 Section 6 amended**

In section 6(1) for “Department of Infrastructure” substitute ~~the~~ Department of Environment, Food and Agriculture ~~the~~.



## SCHEDULE 2

[Article 5]

## TRANSITIONAL PROVISIONS

**1 Interpretation**

In this Schedule—

“**the Advertisements Regulations**” means *the Town and Country Planning (Control of Advertisements) Regulations 2013*;

“**DEFA**” means the Department of Environment, Food and Agriculture;

“**the Development Procedure Order**” means *the Town and Country Planning (Development Procedure) (No. 2) Order 2013*;

“**DOI**” means the Department of Infrastructure;

“**the Registered Buildings Regulations**” means *Town and Country Planning (Registered Buildings) Regulations 2013*;

“**the Telecommunications Order**” means *the Town and Country Planning (Permitted Development) (Telecommunications) Order 2013*;

“**the transfer date**” means 1<sup>st</sup> June 2015; and

“**the transfer of functions**” means the transfer effected by this Order.

**2 Transitional provisions – general rule for applications made but not determined**

(1) This paragraph applies to an application made to DOI before the transfer date —

- (a) for planning approval made in accordance with article 4 of the Development Procedure Order;
- (b) for express consent to advertisements made under regulation 9 of the Advertisements Regulations;
- (c) for registered building consent under regulation 7 of the Registered Buildings Regulations; or
- (d) for prior approval under paragraph 3(7) of Schedule 1 to the Telecommunications Order;

which has not been determined by DOI before that date.

(2) An application to which this paragraph applies must be transmitted to the DEFA for determination by that Department (but subject to section

11(3)(b) of the Town and Country Planning Act 1999 as it has effect in consequence of this Order)<sup>1</sup>.

- (3) This paragraph does not apply to applications which would fall within subparagraph (1) but are made by DoI or DEFA.

### **3 Transitional provisions – rule for applications made by DoI or DEFA but not determined before transfer**

- (1) This subparagraph applies to applications by DoI made before the transfer date but not determined by that date where the application is made under –
- (a) article 4 of the Development Procedure Order;
  - (b) regulation 9 of the Advertisements Regulations; or
  - (c) regulation 7 of the Registered Buildings Regulations.
- (2) For the sake of clarity, despite the transfer of functions, the Council of Ministers is to continue to deal with an application to which subparagraph (1) applies, and which has been referred before the transfer date to the Council of Ministers under –
- (a) article 10 of the Development Procedure Order;
  - (b) regulation 14 of the Advertisements Regulations; or
  - (c) regulation 13 of the Registered Building Regulations.
- (3) Subparagraph (4) applies to an application made to DOI by DEFA before the transfer date under any of the provisions listed in subparagraph (1) and which has not been determined before that date.
- (4) An application to which this subparagraph applies is, on the transfer date, transferred to the Council of Ministers for determination in the same way as it would have been determined had it been made by DOI before the transfer date and this Order had not been made.

### **4 Agreements regulating development of land**

- (1) This paragraph applies where DOI has indicated an intention to grant planning approval subject to the execution of an agreement under section 13 of the *Town and Country Planning Act 1999*.
- (2) If the agreement referred to in subparagraph (1) has not been executed before the transfer date –
- (a) the planning application to which it relates is transferred to DEFA; and

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<sup>1</sup> Section 11(3)(b) is affected by the substitution of the new definition of “the Department” in section 45 of the 1999 Act. Accordingly, an application in relation to land which is vested in DEFA will, after the Order comes into operation, stand referred to the Council of Ministers.

- (b) if DEFA is satisfied as to its terms, DEFA is to execute the agreement and grant the planning approval.

## **5 Consideration of appeals by inspectors**

- (1) Subparagraph (2) or (3) applies if an appeal —
  - (a) has been lodged with DOI under —
    - (i) article 8(1) of the Development Procedure Order (including that paragraph as it applies by virtue of paragraph 3(12) of Schedule 1 to the Telecommunications Order);
    - (ii) regulation 13(1) of the Advertisements Regulations;
    - (iii) regulation 11(1) of the Registered Building Regulations;
  - (b) has been referred to an inspector for a report; and
  - (c) has not been determined before the transfer date.
- (2) If the inspector has signed his or her report before the transfer date, the appeal is to be determined by DOI.
- (3) If the inspector has not signed his or her report before the transfer date, the appeal is to be determined by DEFA.

## **6 Application determined before transfer date but still appealable**

- (1) This paragraph applies where —
  - (a) a planning application has been made and determined by DOI before the transfer date;
  - (b) no appeal has been lodged before that date under —
    - (i) the Development Procedure Order (including that Order as it applies for the purposes of the Telecommunications Order);
    - (ii) the Advertisement Regulations; or
    - (iii) the Registered Building Regulations; and
  - (c) the time for appealing has not expired on or before the transfer date.
- (2) If this paragraph applies the appeal lies to, and falls to be determined by, DEFA.

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order transfers the functions of the Department of Infrastructure in respect of planning, other than planning policy, and building control to the Department of Environment, Food and Agriculture. It makes provision consequent upon that transfer, amending a series of Acts in the planning and building control field. It also includes transitional provisions in connection with the transfer.