

Consultation on the Local Government and Building Control (Amendment) Bill 2016

Issued by:

The Legislation Unit
Strategy, Policy and Performance Division
Department of Infrastructure
Sea Terminal
Douglas

Foreword by the Minister for Infrastructure

I am pleased to invite comments on the proposed legislation, the Local Government and Building Control (Amendment) Bill 2016.

This short piece of legislation seeks to amend several enactments in relation to local government and building control and provides for the introduction of fixed penalties in connection with certain statutory notices and following contravention of certain byelaws.

Some of the proposals in the Bill have already been the subject of consultation with interested parties and a working group which involved officers from the Departments of Infrastructure, Economic development, Environment, Food and Agriculture and from Douglas Borough Council.

The Bill is also intended to address a number of issues raised by a Report of the Council of Ministers on Environment and Infrastructure Policy¹. Under that Report there is a requirement to –

"E1 8.4 Work in partnership with local authorities to improve the management and control of unsightly and dilapidated properties that have a negative impact on our communities"

The Department has also taken the opportunity to amend the legislation as it relates to the maintenance of open land or gardens as well as dilapidated buildings.

Thank you for taking the time to review this document and I look forward to receiving your comments.

A handwritten signature in blue ink, appearing to be 'Phil Gawne', with a long horizontal stroke extending to the right.

Hon. Phil Gawne MHK

Minister for Infrastructure

¹ A Report by CoMin dated May 2013 (GD No:023/13)
Issued: November 2015

1. Summary of the main provisions of the Bill

The Bill amends 3 separate Acts –

- (i) the Local Government (Miscellaneous Provisions) Act 1984 (“the 1984 Act”);
- (ii) the Local Government Act 1985 (“the 1985 Act”); and
- (iii) the Building Control Act 1991 (“the 1991 Act”).

Clause 5 – amends section 14 (maintenance of open land) of the 1984 Act by –

- (i) substituting a new section 14(1) regarding unsightly land or gardens by –
 - (a) inserting the phrase “detrimental to the amenities of the neighbourhood”;
 - (b) making it clear that any detriment can also be caused by “the presence of anything on the land”; and
 - (c) adding provisions which will require that the owner or occupier has to take steps not only to remedy the detriment but also “to prevent the detriment from occurring or recurring”.

Policy reasons - *The new provisions will effectively lower the standard (with regard to unsightly land only) to allow local authorities to take pre-emptive action rather than having to wait until the land was “in such a condition as seriously to injure the amenities of the neighbourhood” (as s.14(1) of the 1984 Act currently states).*

The use of the wording “detrimental to the amenities of the neighbourhood” will mirror similar wording used in section 24(1) of the Building Control Act 1991 relating to dilapidated buildings. This similarity of wording will assist local authorities with their understanding of the legislation.

The use of the term “the presence of anything on the land” will clarify that the detriment covers articles deposited on the land as well as the condition of the land itself.

In order to comply with a statutory notice, some owners or occupiers only take limited action or undertake minimal works to remedy the condition of the land. However, in some cases they then take no further action to properly maintain the land so that the problem often reoccurs. The local authority is then obliged to take further action and incur additional enforcement costs including potential legal costs. The revised provisions should facilitate the on-going management of the land to help prevent the detriment from recurring.

- (ii) Inserting a new sub section (4) which will specify that a statutory notice is not invalid merely on the grounds that any other garden or land in the neighbourhood is in a condition where it could be classed as being “detrimental to the amenities of the neighbourhood”.

Policy reason - *The new provisions are intended to cover situations where a whole area may be run down and several gardens appear, in the authorised officer’s view, to be “detrimental to the amenities of the neighbourhood”. In such cases, the local authority would need to demonstrate that they were also taking enforcement action in respect of any other gardens that were in a similar condition (the only difference being that the enforcement proceedings were not at such an advanced stage).*

Clause 6 – insertion of new section 14A in the 1984 Act

The new section 14A will allow “authorised officers” of local authorities, who are responsible for enforcing the legislation, to take prompt enforcement action regarding unsightly land by means of Fixed Penalty Notices (“FPN’s”). The FPN will be £100.00 although that amount could be amended by an Order made by the Department. The FPN would apply in cases where a person is guilty of an offence under section 58(7) of the Local Government Act 1985 as a result of failure to comply with a statutory notice under section 14 of the 1984 Act. The FPN will offer the person the opportunity of discharging any liability to conviction for an offence under section 58(7) of the 1985 Act by payment of a fixed penalty.

Policy reason - *The option of being able to take action by means of FPNs will assist authorities with the enforcement of the legislation. Authorities are sometimes reluctant to take enforcement action through the courts because of the potential costs involved or the time taken to progress such action. Also, if the degree of detriment to the land was minor authorities are conscious that under the current legislation that a person might end up with a criminal record if convicted for what could be perceived as a “minor” offence. However, local authorities need to recognise that if a FPN is not paid then the authority would need to consider recovering the penalty by way of civil debt and undertaking any remedial work themselves or alternatively proceeding to full prosecution through the Courts.*

Clause 8 - amends the Local Government Act 1985 Act (“the 1985 Act”) by –

- (i) Inserting a new section 30A which will allow authorised officers of a local authority or the Department to issue FPNs (of a £100.00) if it appears to that officer that a person has contravened a byelaw made by the authority or the Department (and where specific FPN provision is not otherwise made in other legislation). The FPN would apply in cases where a person has contravened a byelaw made under a “relevant enactment”. The FPN will offer the person the opportunity of discharging any liability to conviction for an offence under the byelaw by payment of a fixed penalty. “Relevant enactment” means an enactment conferring power to make byelaws on the Department or a local authority and for which specific provision is not otherwise made.

Policy reason - *Local authorities are already able to issue FPNs in respect of offences committed under dog control byelaws. The new powers will also allow authorities (and the Department) to issue FPNs for offences under, for example, General Byelaws.*

- (ii) amending section 58(7) of the 1985 Act by increasing the maximum level of fines imposed by the courts in respect of non-compliance with statutory notices (requesting the execution of works) from £2,500 to £5,000 and the daily fine from £40 to £50 for each day the default continues.

Policy reason – *the level of fines has not been increased for a number of years and as there will now be a FPN for £100.00 there needs to be a greater differential between the amount of a court fine and the amount specified in a FPN.*

Clause 10 amends the Building Control Act 1991 ("the 1991 Act") by -

- (i) Amending section 24 of the 1991 Act by the insertion of additional powers which will mean that the owner or occupier has to take steps not only to remedy the detriment to any dilapidated building but also "to prevent the detriment from occurring or recurring".

Policy reason – *following the receipt of a statutory notice, some owners or occupiers only take limited action or undertake minimal works to remedy the dilapidated condition of a building. However, they then take no further action to properly maintain the building so that the problem often reoccurs. The local authority is then obliged to take further action and incur additional enforcement costs including potential legal costs. The revised provisions should facilitate the on-going management of the building and help prevent the detriment from recurring.*

- (ii) Inserting a new sub section (4) which will specify that a statutory notice is not invalid merely on the grounds that any other buildings in the neighbourhood are in a similar condition and therefore could be classed as being "detrimental to the amenities of the neighbourhood".

Policy reason - *The new provisions are intended to cover situations where a whole area may be run down and several buildings were, in the authorised officer's view, "detrimental to the amenities of the neighbourhood". In such cases, the local authority would need to demonstrate that they were also taking enforcement action in respect of any other buildings that were in a similar dilapidated condition (the only difference being that the enforcement proceedings were not at such an advanced stage).*

- (iii) Insertion of new section 24ZA in the 1991 Act

The new section 24ZA will allow "authorised officers" of local authorities, who are responsible for enforcing the legislation, to take prompt enforcement action regarding dilapidated buildings by means of FPN's. The FPN will be £100.00 although that amount could be amended by an Order made by the Department. The FPN would apply in cases where a person is guilty of an offence under section 58(7) of the Local Government Act 1985 as a result of failure to comply with a statutory notice under section 24 of the 1991 Act. The FPN will offer the person the opportunity of discharging any liability to conviction for an offence under section 58(7) by payment of a fixed penalty.

Policy reason - *The option of being able to take action by means of FPNs will assist authorities with the enforcement of the legislation. Authorities are sometimes reluctant to take enforcement action through the courts because of the potential costs involved or the time taken to progress such action. Also, if the degree of detriment to the building was minor authorities are conscious that under the current legislation that a person might end up with a criminal record if convicted for what could be perceived as a "minor" offence. However, local authorities need to recognise that if a FPN is not paid then the authority would need to consider recovering the penalty by way of civil debt and undertaking any remedial work themselves or alternatively proceeding to full prosecution through the Courts.*

4. The Bill

Details of the Bill are attached as **Annex A**

Issued: November 2015

5. About the Consultation

The purpose of this consultation exercise is to invite comments on the proposed provisions of the draft Local Government and Building Control (Amendment) Bill 2016.

It is not a referendum but is an exercise for gathering information, views and evidence to allow the Department to take an informed decision on the final content of the proposed Bill. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

Anyone wishing to submit their views on the proposed Bill is invited to do so by **Tuesday 22nd December 2015**.

Please return your consultation responses to:-

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Results of the consultation

This consultation follows the Isle of Man Government's Code of Practice on consultations. If you have any comments on how this consultation has been carried out, please contact the Chief Executive's office of the Department of Infrastructure, Sea Terminal, Douglas IM1 2RF.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. Please mark your response clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of comments received.

A summary of responses will be published after the close of the consultation period.

List of consultees

- Tynwald Members
- Acting Attorney General
- Local Authorities
- Isle of Man Law Society
- Chamber of Commerce
- Chief Officers, Government Departments and Statutory Boards
- The Municipal Association

Annex A



**LOCAL GOVERNMENT AND BUILDING CONTROL
(AMENDMENT) BILL 2016**

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LOCAL GOVERNMENT AND BUILDING CONTROL (AMENDMENT) BILL 2016

A **BILL** to amend certain enactments in relation to local government and building control and to provide for the introduction of fixed penalties in connection with certain statutory notices and byelaws.

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 Local Government and Building Control (Amendment) Act 2016.

2 Commencement

- (1) This Act, other than section 1 and this section, comes into operation on such day or days as the Department of Infrastructure may by order appoint.
- (2) An order under than subsection (1) may include such incidental and transitional provision as appears to the Department of Infrastructure to be appropriate.

3 Expiry

- (1) This Act expires —
 - (a) on the day after its promulgation if all of its provisions are in operation on its promulgation; or
 - (b) otherwise, on the day after the last provision of this Act is brought into operation.
- (2) The expiry does not —
 - (a) revive any Act it amended as the Act operated before the amendment commenced;



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- (b) revive anything not in operation or existing when the amendment took effect; or
 - (c) affect the continuing operation of the amendment.

PART 2 – AMENDMENTS TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1984

4 Amendments to the Local Government (Miscellaneous Provisions) Act 1984

The *Local Government (Miscellaneous Provisions) Act 1984*ⁱ is amended in accordance with sections 5 and 6.

5 Amendment of section 14

- (1) Section 14 (maintenance of open land) is amended as follows.
- (2) For subsection (1) substitute –
 - ▣(1) If it appears to a local authority that any garden or vacant or other open land in its district is by virtue of lack of cultivation, the presence of anything on the land, or for any other reason in such a condition as to be detrimental to the amenities of the neighbourhood or that such detriment is likely to occur or recur, the authority may by notice require the owner or the occupier of the land within the time specified in the notice to take such steps as are specified in the notice for abating the detriment, or, as the case may be, to prevent the detriment from occurring or recurring. ▣.
- (3) At the end insert –
 - ▣(4) A notice under subsection (1) is not invalid merely on the ground that any other garden or land in the neighbourhood is in the condition mentioned in that subsection. ▣.

6 Insertion of section 14A

After section 14 (maintenance of open land) insert –

▣ 14A Fixed penalty notices where failure to comply with notice under section 14

- (1) This section applies where a person is guilty of an offence under section 58(7) of the Local Government Act 1985 as a result of failure to comply with a notice under section 14.
- (2) The local authority may serve on that person a notice offering him or her the opportunity of discharging any liability to conviction for an offence under section 58(7) of the *Local Government Act 1985* by payment of a fixed penalty.

-
- (3) Where a person is given a notice under this section in respect of an offence —
- (a) no proceedings may be instituted for that offence before expiration of the period of 14 days following the date of the notice; and
 - (b) he or she may not be convicted of that offence if he or she pays the fixed penalty before the expiration of the period.
- (4) A notice under this section must give such particulars of the circumstances constituting the offence as are necessary for giving reasonable information of the offence.
- (5) A notice under this section must also —
- (a) state the period during which, by virtue of subsection (3), proceedings will not be taken for the offence;
 - (b) state the amount of the fixed penalty;
 - (c) state the person to whom and the address at which the fixed penalty may be paid; and
 - (d) contain a statement informing the person of the local authority's powers under subsection (13) and section 58(7) of the *Local Government Act 1985* in the event that the works are not carried out.
- (6) Subject to subsection (5), the form of a notice under this section is to be such as the Department may specify.
- (7) The fixed penalty payable to the local authority under this section is, subject to subsection (10), £100 or such other amount as the Department may specify.
- (8) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty to the person mentioned in subsection (5)(c) at the address so mentioned.
- (9) Where a letter is sent in accordance with subsection (8) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (10) The Department may make provision by order for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the Department.
- (11) An order under this section does not have effect unless it is approved by Tynwald.
- (12) A fixed penalty under this section is recoverable as a civil debt and in any proceedings a certificate which —
- (a) purports to be signed by an authorised officer; and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(13) Where a fixed penalty under this section has been paid, but the works to which the notice under section 14 relates have not been carried out in accordance with that notice a local authority may exercise the power in section 58(7)(b) of the *Local Government Act 1985* in relation to those works at the end of the specified period.

(14) In this section —

“**authorised officer**” means an officer of a local authority who is authorised in writing by the local authority for the purposes of this section; and

“**specified**” means specified by order made by the Department. **22**.

PART 3 – AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1985

7 Amendments to the Local Government Act 1985

The *Local Government Act 1985*ⁱⁱ is amended in accordance with sections 8 and 9.

8 Insertion of section 30A

After section 30 (procedure, etc. for byelaws) and immediately before the cross-heading preceding section 31 insert —

30A Fixed penalty notices for contravention of byelaws

(1) This section applies if it appears to an authorised officer that a person has contravened a byelaw made under a relevant enactment.

(2) The authorised officer may serve on that person a notice offering him or her the opportunity of discharging any liability to conviction for an offence under the byelaw by payment of a fixed penalty.

(3) Where a person is given a notice under this section in respect of an offence —

(a) no proceedings may be instituted for that offence before expiration of the period of 14 days following the date of the notice; and

(b) he or she may not be convicted of that offence if he or she pays the fixed penalty before the expiration of the period.

(4) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(5) A notice under this section must also state —



-
- (a) the period during which, by virtue of subsection (3), proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and
- (c) the person to whom and the address at which the fixed penalty may be paid.
- (6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty to the person mentioned in subsection (5)(c) at the address so mentioned.
- (7) Where a letter is sent in accordance with subsection (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (8) The form of a notice under this section is to be such as the Department may by order specify.
- (9) The fixed penalty payable to the local authority under this section is, subject to subsection (10), £100 or such other amount as the Department may specify.
- (10) The Department may make provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the Department.
- (11) An order under this section does not have effect unless it is approved by Tynwald.
- (12) A fixed penalty is recoverable as a civil debt and in any proceedings a certificate which –
- (a) purports to be signed by an authorised officer; and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- is evidence of the facts stated.
- (13) In this section –
- “**authorised officer**” means an officer of a local authority or the Department who is authorised in writing by the local authority or the Department as the case may be for the purposes of this section;
- “**relevant enactment**” means an enactment, whenever passed, conferring power to make byelaws on the Department or a local authority and for which specific provision is not otherwise made; and
- “**specified**” means specified by order made by the Department. **22**.

9 Amendment of section 58

- (1) Section 58 (appeals against, and enforcement of, notices requiring the execution of works) is amended as follows.



-
- (2) In subsection (7)(a) —
- (a) for “£2,500” substitute **£5,000**; and
 - (b) for “.£40” substitute **£50**.

PART 4 – AMENDMENTS TO THE BUILDING CONTROL ACT 1991

10 Amendments to the Building Control Act 1991

The *Building Control Act 1991*ⁱⁱⁱ is amended in accordance with sections 11 and 12.

11 Amendment of section 24

- (1) Section 24 (ruinous buildings) is amended as follows.
- (2) In section (1) —
 - (a) after the word “neighbourhood” insert **or that detriment to the amenities of the neighbourhood is likely to occur or recur for this reason**;
 - (b) in paragraph (a) after the word “detriment” insert **or as the case may be, prevent it from occurring or recurring**;
 - (c) in paragraph (b)(ii) after the word “removed” insert **or prevented from occurring or recurring**;
 - (d) in paragraph (c)(ii) after the word “removed” insert **or prevented from occurring or recurring**.
- (3) In subsection (2)(b) after the word “neighbourhood” insert **or that a detriment to the amenities of the neighbourhood is likely to occur or recur for this reason**.
- (4) After subsection (4) insert —
 - (4A)** A notice under subsection (1) is not invalid merely on the ground that any other building or structure in the neighbourhood is in the condition or state mentioned in that subsection.

12 Insertion of section 24ZA

After section 24 (ruinous buildings etc.) insert —

24ZA Fixed penalty notices where failure to comply with notice under section 24

- (1) This section applies where a person is guilty of an offence under section 58(7) of the *Local Government Act 1985* as a result of failure to comply with a notice under section 24.
- (2) The local authority may serve on that person a notice offering him or her the opportunity of discharging any liability to conviction for an



offence under section 58(7) of the *Local Government Act 1985* by payment of a fixed penalty.

- (3) Where a person is given a notice under this section in respect of an offence —
- (a) no proceedings may be instituted for that offence before expiration of the period of 14 days following the date of the notice; and
 - (b) he or she may not be convicted of that offence if he or she pays the fixed penalty before the expiration of the period.
- (4) A notice under this section must give such particulars of the circumstances constituting the offence as are necessary for giving reasonable information of the offence.
- (5) A notice under this section must also —
- (a) state the period during which, by virtue of subsection (3), proceedings will not be taken for the offence;
 - (b) state the amount of the fixed penalty;
 - (c) state the person to whom and the address at which the fixed penalty may be paid; and
 - (d) contain a statement informing the person of the local authority's powers under subsection (13) and section 58(7) of the *Local Government Act 1985* in the event that the works required by the notice under section 24 are not carried out.
- (6) Subject to subsection (5), the form of a notice under this section is to be such as the Department may specify.
- (7) The fixed penalty payable to the local authority under this section is, subject to subsection (10), £100 or such other amount as the Department may specify.
- (8) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty to the person mentioned in subsection (5)(c) at the address so mentioned.
- (9) Where a letter is sent in accordance with subsection (8) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (10) The Department may make provision by order for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the Department.
- (11) An order under this section does not have effect unless it is approved by Tynwald.

(12) A fixed penalty under this section is recoverable as a civil debt and in any proceedings a certificate which —

- (a) purports to be signed by an authorised officer; and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(13) Where a fixed penalty under this section has been paid, but the works to which the notice under section 24 relates have not been carried out in accordance with that notice a local authority may exercise the power in section 58(7)(b) of the *Local Government Act 1985* in relation to those works at the end of the specified period.

(14) In this section —

“**authorised officer**” means an officer of a local authority who is authorised in writing by the local authority for the purposes of this section; and

“**specified**” means specified by order made by the Department. **22**.

c. 5ⁱ

ii c. 24

iii c. 21