



**Isle of Man**  
**Government**

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

### RESPONSE TO THE CONSULTATION

DEPARTMENT OF INFRASTRUCTURE

FEBRUARY 2016

## **Part 1 – The consultation exercise**

The consultation on the Local Government and Building Control (Amendment) Bill ran from 19<sup>th</sup> October 2015 (for local authorities) and from 10<sup>th</sup> November 2015 (for the public) and finished on 22<sup>nd</sup> December 2015.

A copy of the draft Bill and a consultation booklet which included background information about the Bill's provisions were included within the information issued. The consultation exercise was focused on inviting comments from local authorities as those authorities are responsible for enforcing the legislation pertaining to dilapidated buildings and unsightly land.

The consultation information was issued electronically to all Tynwald members, local authorities, Government Departments, IOM Chamber of Commerce, Isle of Man Law Society and the Municipal Association. A news release was also issued by the Department on 10 November 2015 and at that date the consultation documents were made available on the Government's website.

## **Part 2 – The Responses**

A total of 27 responses were received, as follows-

Local authorities: 14

Departments: 3

MHK's: 2

Organisations: 2

Private individuals: 6 (including 1 anonymous)

In general the responses received were supportive of all the Bill's proposals and recognised that the new proposals would assist local authorities in their enforcement of the legislation.

In particular, respondents noted that –

- Aligning the wording in section 14 of the Local Government Act 1985 and section 24 of the Building Control Act 1991 so both sections contain the wording ( "detrimental to the amenities of the neighbourhood") was seen as a positive move as it will enable the same test on a detriment to amenity to be applied to both land and buildings.
- The replacement of the words "in such a condition as seriously to injure the amenities of the neighbourhood" with "detrimental to the neighbourhood" will also allow local authorities to take action at an earlier stage before the detriment became serious.
- Measures which will help prevent any detriment from recurring were also welcomed
- Empowering local authorities to issue fixed penalty notices was seen as "a positive step forward" and an additional enforcement option which had the potential to save time and help local authorities avoid costly action through the courts.

### **Queries that arose during consultation**

A number of queries were raised, the main ones are detailed below with the Department`s response *in italic* –

#### **How effective will the new legislation be?**

*This will largely depend on the extent to which local authorities are prepared to enforce the new legislation. The Department has previously issued comprehensive guidance to local authorities (advising on the procedures to follow when dealing with complaints relating to unsightly land and dilapidated buildings) and this guidance will be updated to take account of the changes in this Bill.*

#### **Will local authorities be capable of properly enforcing the legislation?**

*Some of the larger local authorities already employ officers who are capable of enforcing the legislation. The smaller local authorities may need to seek advice from those authorities and authorities in general may need to consider ways of working together to pool knowledge and experience. Officers from the Department and Environmental Health Officers from DEFA will still be available to offer advice on the legislation, although it is anticipated that the need for such advice will gradually diminish as local authorities gain further experience on the enforcement of the legislation.*

**Is the proposed amount of £100.00 for the fixed penalty notice ("FPN") set too low for unsightly land /dilapidated buildings and set too high for contravention of byelaws?**

*The Department has determined to increase the amount of the FPN to £200 for unsightly land and dilapidated buildings cases and to leave the amount for the FPN for byelaws contravention at £100. However, the time period allowed for paying both types of FPN has been increased from 14 to 21 days and there is also provision which allows for a lesser amount to be paid if the FPN is paid within a period specified by the Department (probably 14 days). The Department will have the power to amend the fixed penalty amount by order.*

**Could extra provision be included to allow repeat FPN's to be issued (for unsightly land and dilapidated buildings cases)?**

*It has not been possible to amend the Bill to allow repeat FPNs to be issued. The essential precondition for the issuing of a FPN is that the person is "guilty of an offence... as a result of failure to comply with a statutory notice". The person can avoid prosecution (and a criminal record) by paying the FPN. If repeat FPNs were permitted it could be perceived as a way of generating revenue and an unreasonable use of powers which would be contrary to established policy and procedures.*

*The Department's view is that if the FPN is not paid (and assuming the works have not been undertaken) then the authority could both recover the penalty by way of a civil debt and exercise the powers in subsection (13) to conduct remedial work or alternatively proceed to full prosecution.*

*There are 4 possibilities with regard to the manner the FPN regime will operate*

- 1. The person could have the works done and pay the FPN paid; in this case obviously no further action would be necessary.*
- 2. The person could have the works done but not pay the FPN (this seems unlikely, but it is possible); in this instance the Department anticipate that the local authority may consider using the powers provided by subsection (12) of the respective inserted sections 14A and 24ZA in order to recoup the sum as a civil debt, but obviously no further action would need to be taken in relation to the works themselves.*
- 3. You could have a situation where the works have not been done but the FPN is paid. In this case, the Department anticipates that the authority would exercise the powers conferred by subsection (13) of the respective inserted sections in order to ensure that the principal object of the exercise is not defeated by an individual paying potentially small amounts by way of FPN but ignoring the requirement to do the work. The new subsection (13) is designed to put beyond doubt the fact that a local authority is not precluded from exercising the remedial powers in section 58(7)(b) of the 1985 Act simply because it has decided to proceed by way of a FPN rather than by way of prosecution.*
- 4. You could encounter the worst case scenario: the FPN is left unpaid and the works are left undone. In this situation the authority could both recover the penalty by way of a civil debt and exercise the powers in subsection (13) to conduct remedial work or alternatively proceed to full prosecution. Subsection (5) of the respective new sections makes it clear that the issuance of a FPN is merely a reprieve from prosecution under section 58 of the*

*1985 Act providing that the penalty is paid in time. If it is not paid the full rigour of the law may be brought*

### **What happens to the fines imposed by the courts?**

*Any fines imposed by the courts will be paid to local authorities – under the Collection of Fines Act 1985, the Treasury can make an order which provides for fines adjudged to be paid following conviction by a criminal court to be paid by the Chief Registrar to the relevant local authority. The Department will recommend to the Treasury that such an order is made following the passing of the new Act. The new legislation already provides for the amount of the FPN to be paid directly to the local authority.*

### **Could the maximum amount of the court fine and FPN be increased by secondary legislation (to take account of inflation)?**

*The Bill already contains powers to allow the Department to increase the amount of the FPN by Order. Additionally, section 9 of the Act has increased the amount of Court fine from £2,500 to £5,000 and the Department considers that this level of increase will be adequate for many years, especially as the inflation rate is so low at the moment.*

### **Should there be appeal provisions within FPN procedures?**

*When FPNs are issued with regard to unsightly land and dilapidated buildings it will be because the person has failed to undertake the relevant works detailed in the statutory notice. The statutory notice already includes appeal provisions (under section 58(3) of the Local Government Act 1985) so a person would have had an opportunity to lodge an appeal before the FPN was issued. However, if the person wants to appeal the FPN then that person would still have the opportunity to contest the matter during any court proceedings, assuming such proceedings were initiated by the local authority.*

### **What would be the minimum standards building or land owners must comply with?**

*Once the new legislation is enacted, the Department, in conjunction with Environmental Health Officers from DEFA, will update the guidance that is currently provided to local authorities. Ultimately, it will be up to the local authorities to decide whether action should be taken, the final arbiter being the High Bailiff/ Magistrates Court.*

### **Would the Environmental Health Officers from DEFA, who currently provide advice to local authorities under sections 22 to 24 of the Building Control Act, be required to be involved in the implementation of this legislation?**

*EHOs are involved in advising local authorities on dangerous buildings/structures. More recently local authorities have been undertaking their own investigations and action in relation to dilapidated premises and unsightly land and gaining extra experience as a result.*

## **Part 4 – Conclusion**

In general, most of the comments were positive and supportive of the new provisions. There was recognition that the new proposals would assist local authorities in their enforcement of the legislation relating to dilapidated buildings and unsightly land. In particular, allowing local authority authorised officers the ability to issue fixed penalty notices was acknowledged as an especially useful addition to the enforcement options available to local authorities.

## **List of Respondents**

### **Local authorities**

Douglas Borough Council

Castletown Town Commissioners

Peel Town Commissioners

Ramsey Town Commissioners

Castletown Town Commissioners

Michael District Commissioners

Laxey Village Commissioners

Arbory Parish Commissioners

Braddan Parish Commissioners

Lonan Parish Commissioners

Malew Parish Commissioners

Marown Parish Commissioners

Patrick Parish Commissioners

Rushen Parish Commissioners

### **Government Departments, Boards etc**

Department of Environment, Food and Agriculture

Department of Home Affairs

Manx Utilities Authority

### **Other organisations**

Douglas Development Partnership

I.o.M. Chamber of Commerce

### **Individuals**

Mr Bill Henderson, MHK

Mr Juan Watterson, MHK

Mr Mike Kruup

Mr Mathew Warren

Mr Ian Bleasdale

1 Anonymous