

ADMINISTRATION OF JUSTICE AND OTHER AMENDMENTS BILL 2021

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr W. C. Shimmins MHK.

1) INTRODUCTION

These explanatory notes relate to the Administration of Justice and Other Amendments Bill 2021 (the "Bill") and have been prepared by the Treasury, in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.

It is recommended that these notes be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

The Bill has been subject to consultation and has been updated to take into account comments raised.

An Impact Assessment and a Data Protection Impact Assessment have been prepared.

In the opinion of the Member moving the Bill, the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

If approved, it is not anticipated that the resulting Act will involve any, or any significant, change to Government income or expenditure or have any other significant resource implications.

2) BACKGROUND

A wide reaching review of civil debt recovery in the Island has been undertaken in order to modernise the arrangements for civil debt recovery so as to ensure they are fair and effective. The Bill has been developed following consultation on the options for improving how civil debts are recorded and made accessible in the Island, and for improving the effectiveness of debt recovery by the Coroners. Accordingly, the Bill amends other legislation to —

- increase the range of civil debts recorded in the Judgments Register, in particular to enable debts arising through Treasury warrants for payment to be recorded in the public register;
- enable the Chief Registrar to enter into contractual arrangements for the publication of both the Judgments Register and the Fines Register. These arrangements will enable the registers to be published electronically online by a selected third party;
- remove certain provisions included in landlord and tenant legislation in order to assist the coroners when undertaking their duties as respects enforcement action in the Island; and
- repeal or amend various other pieces of legislation consequentially.

3) STRUCTURE OF THE BILL

The Bill has 22 clauses and 4 parts.

Part 1 of the Bill (clauses 1 and 2) contains preliminary matters.

Part 2 of the Bill (clauses 3 to 7) makes various amendments to the Administration of Justice Act 1981.

Part 3 of the Bill (clauses 8 and 9) amends section 101A of the Summary Jurisdiction Act 1989.

Part 4 of the Bill (clause 10 to 22) includes consequential amendments and repeals to 12 Acts and a piece of secondary legislation.

4) COMMENTARY ON CLAUSES

Clauses 1 and 2 provide respectively for the short title and for the commencement of the resulting Act.

Clause 3 introduces the changes to the Administration of Justice Act 1981 (the 1981 Act) and provides that a reference in Part 2 of the Bill to a numbered section or Schedule is a reference to the section of, or Schedule to, the 1981 Act so numbered, unless specified otherwise.

Clause 4 amends section 12 by adjusting the priorities for the collection of debts by the coroner so they are in accordance with the Debtors Act 1820 and the Preferential Payments Act 1908. The effect of the change, when taken with clause 14, is to remove the automatic priority for the satisfaction of rent owed to a landlord in preference to other debts a person may have accrued.

Clause 5 substitutes section 15 (register of judgments) of the 1981 Act and inserts additional sections 15A to 15F.

Substituted section 15 requires the Chief Registrar to maintain a register of judgments relating to monies owed on account of a judgment of the High Court or a tribunal other than under section 1 of the Collection of Fines etc. Act 1985, and warrant debts. Subsection (2) requires the register to be kept in accordance with regulations made by the Deemsters, which are subject to the negative Tynwald procedure. Subsection (3) requires the Deemsters to consult such persons as they consider appropriate in respect of proposed regulations. Subsections (4) and (5) set out what provision may be made by such regulations. Subsection (6) defines "judgment" and "warrant debt". Subsection (7) empowers the Treasury to amend subsections (1) and (6) consequentially by order subject to Tynwald approval. Subsection (8) requires the Treasury to consult on such an order with such persons as it considers appropriate.

New subsection 15A sets out requirements to provide data to the Chief Registrar. Subsection (1) imposes duties on the Assessor and the Treasury (as appropriate) in relation to warrant debts. Subsection (2) imposes similar duties on the clerk to a relevant tribunal. Subsection (3) ensures there is no question that the duty to provide information in subsections (1) and (2) must be complied with.

New subsection 15B makes provision about the keeping and publication of the register by the Chief Registrar. Subsections (1) to (3) empower the Chief Registrar to keep the register in such manner as the Chief Registrar thinks fit, and to publish the information so as to ensure members of the public may inspect it. The provisions empower publication by electronic means. Subsection (4) empowers the Chief Registrar to enter into arrangements with a third party for that party to maintain the register.

New subsection 15C makes provision about fees that may be charged in relation to access to the register. Subsection (1) provides that fees must be specified by the Treasury in an order subject to the negative Tynwald procedure. Subsection (2) provides that such an order may not be made where access to the register or a certified copy of an entry on the register are provided by a third party under arrangements with

the Chief Registrar. Subsection (3) provides that any fees levied must be applied to pay the expenses incurred in keeping the register and publishing the information recorded on it, with any surplus being paid into the General Revenue.

New subsection 15D provides that data protection legislation is not affected by new sections 15 to 15C.

New subsection 15E makes transitional provision to ensure that no warrant is entered on the register unless the person has been notified they are liable to pay a sum of money and the warrant has been issued after the coming into operation of this section.

New subsection 15F restricts the entry of warrants on the register until the 14 day period during which a person may apply to set aside the warrant has passed¹. A warrant may still not be entered on the register until a further 3 days have elapsed to allow for an application that may have been posted on the 14th day to be received. A person may, of course, send their application by email. Subsection (2) provides that the warrant debt owed must be at least £1,000.

Clause 6 amends section 26 (interpretation) of the 1981 Act to insert new definitions in respect of "data protection legislation", "register", "register regulations", "warrant for payment", and substitutes an extended definition of "execution" (listing meaning from (a) through to (g)).

Clause 7 of the Bill amends paragraph 3 of Schedule 1 to the 1981 Act, which makes provision as to the arrest and sale of goods by a coroner in the enforcement of an execution order.

Subsection (1) removes the requirement for a coroner, in these circumstances, to leave a tenant with sufficient goods to make payment in respect of 12 months' rent, and works in concert with the repeal effected by clause 14 of the Bill.

Subsection (2) inserts paragraphs 3A and 3B in to Schedule 1 in order to deal with the situation where an execution order has been granted against a tenant before the coming into operation of the Bill, but the enforcement of the execution order has not taken place.

Clause 8 introduces amendments to the Summary Jurisdiction Act 1989.

Clause 9 substitutes section 101A (register of sums adjudged to be paid on conviction) in order to standardise the requirements in the fines register with the provisions being introduced in respect of the judgments register. The substitution introduces new sections 101B and 101C. New section 101B makes provision for fees to be charged in respect of access to the register and new section 101C makes provision to the effect that nothing in sections 101A or 101B affects data protection legislation.

Clause 10 repeals section 25 (power to landlord to distrain for rent) of the Bankruptcy Code 1892. This provision is no longer relevant upon the repeal of the Recovery of Rent Act 1954 (see clause 14).

Clause 11 repeals section 6(a) (savings) of the Preferential Rents Act 1908, which provided that the 1908 Act was without prejudice to section 4 of the Recovery of Rent

¹Sections 98B(4) of the Income Tax Act 1970, 114B(4) of the Social Security Administration Act 1992 (of Parliament, as Applied to the Island) and 25(4) of the Gambling Duty Act 2012, and paragraph 7(4) of Schedule 12 to the Value Added Tax Act 1996, provide for a 14 day period within which a person may apply in writing to the Chief Registrar to have the warrant set aside.

Act 1954. This is because it will no longer be relevant upon the repeal of that Act (see clause 14).

Clause 12 substitutes section 1(2) of the Conveyancing (Leases and Tenancies) Act 1954 so that Act is construed as one with the Landlord and Tenant Act 1954, and the Tenancies (Implied Terms) Act 1954. The three Acts may be cited together as the Landlord and Tenant Acts 1954.

Clause 13 makes some small amendments the Landlord and Tenant Act 1954 (the LTA). Subsection (2) provides that the LTA is to be construed as one with the Conveyancing (Leases and Tenancies) Act 1954, and the Tenancies (Implied Terms) Act 1954, and may together be cited as the Landlord and Tenant Acts 1954. Subsection (3) substitutes section 12 (recovery of deserted property) of the LTA in respect of how any goods left on deserted premises, when the landlord is granted possession, are to be dealt with. Subsection (1) of the substituted section 12 largely repeats existing section 12 in the LTA but without reference to landlord's arrest, which ceases with the repeal of the Act mentioned in clause 14. Subsection (2) of the substituted section 12 provides that where a coroner has placed a landlord in possession of the premises, the court may, when making an order under substituted subsection (1), order that the landlord may dispose of any goods left on the premises. If the goods are of any monetary value the landlord may sell the goods subject to such conditions as may, or may not, be specified. If there is any money remaining it is to be paid into the court to the credit of the tenant. In effect, if the tenant owes money to other creditors then that sum will be transferred to the other creditors.

Clause 14 repeals the Recovery of Rent Act 1954.

Clause 15 amends the Tenancies (Implied Terms) Act 1954 so it is construed as one with the Landlord and Tenant Act 1954, and the Conveyancing (Leases and Tenancies) Act 1954, and the Acts may together be cited as the Landlord and Tenant Acts 1954.

Clause 16 amends the Income Tax Act 1970. Subsection (2) amends section 106 (information confidential) by clarifying, in subsection (4)(f), that documents or information may be disclosed to the Judgments Officer or a Coroner or Lockman for the purpose of enforcing the collection of income tax or national insurance contributions. After subsection (5B) in the Act, a new subsection (5C) is inserted to provide further assurance that the disclosure of information under clarified subsection (4)(f) does not contravene subsection (5A), which makes the disclosure of information or documents for purposes other than those for which the information was provided an offence, if the use or disclosure is for the purpose of the performance or discharge of any of the Judgments Officer's, Coroner's or Lockman's functions under the Administration of Justice Act 1981 including the enforcement of any other execution (within the meaning of section 26 of the 1981 Act).

Subsection (3) inserts a new section 106G into the Income Tax Act 1970 to empower the disclosure by the Assessor of Income Tax of information to the Chief Registrar for the purposes of the new sections 15 to 15F (as substituted by clause 5) or enabling the Chief Registrar to perform or discharge any of the functions ascribed to the Chief Registrar under the 1981 Act. Subsections (2), (3) and (4) of inserted new section 106G are incidental to the information gateway, thus provided.

Clause 17 repeals section 6(2)(e) of the Preferential Payments and Other Acts (Financial Adjustments) Act 1973 (short title and citation). As this subsection provided that the 1973 Act was construed as one with the Act that is repealed by clause 14, it has no relevance and is consequentially removed.

Clause 18 amends the Customs and Excise Act 1986 (“the 1986 Act”). Subsection (2) inserts new sections 174DA and 174DB into the 1986 Act. Section 174DA(1) enables information to be disclosed to the Chief Registrar by the Treasury, the Collector or an officer authorised in writing by the Treasury to be an officer of customs and excise for any purposes set out in sections 15 to 15F of the 1981 Act concerning the register (see clause 5), or for the purpose of enabling and assisting the Chief Register in performing and discharging his or her functions under the 1981 Act. Section 174DA(2) prohibits the Chief Registrar from using the information obtained under this information disclosure gateway for any purposes other than those specified in section 174DA(1) (in the same manner as is provided for in clause 16 in respect of the Income Tax Act 1970). New section 174DB makes like provision in respect of a Judgments Officer, a Coroner, or a Lockman.

Clause 19 repeals section 32 of the Administration of Estates Act 1990 (landlord’s arrest) as this is no longer relevant following the repeal of the Recovery of Rent Act 1954 (see clause 14).

Clause 20 repeals section 15 of the Debt Recovery and Enforcement Act 2012 (priority of debts) as a consequence of the removal of the automatic priority for the satisfaction of rent owed to a landlord in preference to other debts a person may have accrued (see clause 4).

Clause 21 amends section 130 of the Equality Act 2017 to enable the Employment and Equality Tribunal (the “Tribunal”) to grant executions with respect to decisions involving the award of a sum of money under that section. The amendment is to rectify a discrepancy in section 130 with respect to the powers the Tribunal currently holds to grant execution under section 159 of the Employment Act 2006.

Clause 22 amends the Schedule to the Social Security Administration Act 1992 (Application) Order 1994 to insert two new sections, 122DI and 122DJ, to the Social Security Administration Act 1992 as it applies in the Island (“the 1992 Act”). The new sections inserted do not alter existing information sharing arrangements. They are intended to enable the Treasury (“the Department” in the 1992 Act) to provide information to the Chief Registrar, a Judgments Officer, a Coroner or a Lockman in specified circumstances and are similar to the information sharing provisions in clauses 16 and 18 of the Bill.