

1. Bills of Exchange (Amendment) Bill 2016 – Second Reading approved

Mr Henderson to move:

That the Bills of Exchange (Amendment) Bill 2016 be read a second time.

The President: Our Item of business: Bills of Exchange (Amendment) Bill, and I call on the mover, Mr Henderson, to move the Second Reading.

Mr Henderson: Gura mie eu, Eaghtyrane.

As outlined at the First Reading, the purpose of the Bill is to mirror legislation made by the UK government to facilitate the use of electronic imaging in the presentment of cheques and other instruments in place of the physical delivery of those instruments themselves, opening the way to a modernised IT system for clearing cheques.

The Bill itself is made up of four clauses and introduces a new Part 4A into the Bills of Exchange Act 1883. Because of the wording contained in the 1883 Act cheques have to be physically transported from bank or building society branches to central clearing centres in the UK, where they are processed before being exchanged with the relevant banks and building societies for payment. It is a slow and labour-intensive process but it has to be done this way because the current law requires it.

The Bill would apply to cheques and other paper instruments that are currently cleared using the same system, including cheques, bankers' drafts, postal orders, government payable orders, warrants, travellers' cheques and bank giro credits.

The Bill enables Treasury to make regulations to prescribe the circumstances in which presentment by image is not permissible, the conditions under which compensation can be claimed, and the specific matters for which a payee's bank will be liable. Once the regulations are drafted – the exact requirements of which are still under discussion – they would be subject to consultation with the Isle of Man Bankers Association and would be based on the corresponding UK regulations to ensure consistency of approach.

A specific timescale for the project to complete will be announced by the UK in due course and we will work alongside the UK implementation dates. Any regulations that we do make under this Bill will have to be approved by Tynwald before they come into operation.

We are following the United Kingdom in introducing this Bill, as all major UK high street banks are represented on the Island and the high street banks will expect electronic cheque presentation by, or to, their branches wherever they may be located. Therefore we need to ensure we have the same legal framework to allow branches in the Isle of Man to clear cheques electronically for the benefit of customers.

Eaghtyrane, I would just like to add at this point with regard to the questions you raised at the last reading, in relation to the timeliness that this may produce: I can report it is anticipated that the introduction of cheque imaging will reduce the delay between presentment and transfer of funds from as much as the six days at present, to cheques possibly being processed by the next working day after they are presented. So the aim would be for a cheque paid in on a weekday before the cut-off time, you will be able to withdraw the funds by 23:59 on the next weekday. Ultimately, however, the exact processing timeframe will depend on how the new system works and how the cheque image is submitted. Naturally, if a paper cheque was handed into a bank where staff scanned it, this may take just slightly longer to process than if the customer introduces the image into the system themselves through the use of mobile banking app or enabled ATM.

I hope I have gone some way to answering your question, Eaghtyrane, and with that I beg to move the Second Reading.

The President: Thank you, Mr Henderson.
Mr Coleman.

Mr Coleman: Thank you, Mr President. I beg to second and reserve my remarks.

The President: I put the question that the Bills of Exchange (Amendment) Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Bills of Exchange (Amendment) Bill 2016 – Clauses considered

The President: We will go on to the clauses, in that case.
Mr Henderson, clause 1.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 1 gives the short title to the Act which will result from this Bill.
Eaghtyrane, I beg to move that clause 1 stand part of the Bill.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President. I beg to second and reserve my remarks.

The President: I put the question that clause 1 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 2.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 2 provides for the commencement of the Act which will be through an appointed day order.
Eaghtyrane, I beg to move that clause 2 stand part of the Bill.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President. I beg to second and reserve my remarks.

The President: I put the question that clause 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 3.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 3 is the expiry clause. Once all of the Act's provisions are in operation the Act will expire. This is the method of tidying up the statute books where, once the amendment is complete, the effect continues in operation but the Act itself expires.
Eaghtyrane, I beg to move that clause 3 stand part of the Bill.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President. I beg to second and reserve my remarks.

The President: I put the question that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 4 is the mechanics of the Bill. Clause 4 inserts Part 4A, which is made up of six sections numbered from 89A to 89F, into the Bills of Exchange Act 1883, to permit the use of the same systems for the handling of cheques presented to a banker on the Isle of Man, as apply in the case of cheques presented to UK bankers. I will go through the inserted sections now; and there is a lot of content to this clause, so I beg Members' patience.

Section 89A sets out the terms under which a cheque might be presented for payment electronically by providing an electronic image of the front and back of the instrument. Regulations will limit the use of presentment by image in case new types of instrument, or new types of dealing with existing types of instrument, are developed.

Where presentment of payment is made by electronic means under this section, then any existing requirements for paper presentation or delivery are disapplied whenever such requirements arise. However, provision is included to ensure that the duties of the bankers involved in presentment and payment are the same as they would be if the paper instrument were presented.

Section 89B defines what types of payment instrument the new proposals can refer to, for example these would include a cheque, bankers' drafts, postal orders and travellers' cheques. It does not include banknotes.

Section 89C provides that the new method of presentment is not available where a bank imposes terms on a customer which require the customer to provide an image of the instrument for paying in, and prevent the customer from providing the instrument itself to the bank.

Section 89D enables Treasury to make regulations requiring the paying banker to provide a copy of the instrument to the payer, and that the copy provided is evidence of receipt of payment by the payee. The regulations will also contain details of the format in which the copy is to be provided, any accompanying information to be provided and the precise circumstances in which the copy must be made available. The development of the regulations will depend on the technical design of the cheque clearing system, which is not yet complete. It may also change in future if there are technical developments of the clearing system.

Section 89E gives the Treasury the power to introduce regulations for compensation if the electronic system fails in any particular instance. It is crucial that the new liability framework is sufficiently flexible to adapt over time. The regulations will designate the specific matters for which a payee's bank is liable. The content of these regulations will be published by the UK in due course, when a clearer view on the final infrastructure design emerges.

Section 89F contains supplementary provisions about the making of regulations under Part 4A including the need for any regulations under this Part to be approved by Tynwald before they come into operation.

That is the end of the inserted sections, Eaghtyrane, so I will finish with the rest of clause 4.

Subsection (3) of clause 4 inserts wording into section 52(4) of the Bills of Exchange Act 1883 to make reference to the presentment of instruments by electronic means.

Subsection (4) omits section 74B of the 1883 Act which provides for alternative means of presentation of cheques for payment by a banker.

Subsection (5) inserts wording into section 87 of the 1883 Act to make reference to the presentment of instruments by electronic means.

Subsection (6) clarifies that the provisions for electronic presentation of instruments apply to any paper instruments presented after the provisions are commenced. That includes the presentation of any instrument created before the date of commencement.

Eaghtyrane, I beg to move that clause 4 stand part of the Bill.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President. I beg to second and reserve my remarks.

The President: Mr Anderson.

Mr Anderson: Yes, thank you, Mr President.

I would just like the mover to reassure us – and I think I did cover this before – just to give us some assurance that the introduction of this method will not increase fraudulent activity, or give more opportunities to people who want to do things illegally.

I think I asked the mover previously which countries – and I think he was going to come back to me on this – have already implemented this legislation.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I think the countries involved are America, India and France as a starting point for that. America has been going since about 2004, just to answer that particular query.

In relation to the fraud aspect, I have some information here, Eaghtyrane. I understand the concerns because one of the issues raised as we have gone along this process and with other countries, is the fact that you can do your electronic imaging at an ATM, for instance, and then somebody could try, in theory, to rush round and present the paper instrument to try and initiate a double payment.

The banks are well aware of this position and, as we speak, are building their own unique bespoke software to try and counter this. I cannot give intimate details of those bespoke systems for obvious security reasons. However, some systems as we see now will be further developed whereby banks now can fairly quickly scan an account and they know what kind of an account activity is normal, as they know what your normal activity is. If they suspect a suspicious payment or withdrawal it can quickly be electronically measured against that activity and an alert note sent out. That happens now and, in fact, it has happened with my own bank in my own personal circumstances and it quickly eliminated a fraudulent activity, or an attempt on my account, which was done twice.

So they are lifting the technology they have now and putting it towards the electronic presentment of cheques. Further to that, the switch to a process of scanning cheques for digital clearing will naturally increase the chances of a cheque being processed twice as I have indicated, but this has been recognised by the UK banking industry and the onus for detecting and preventing fraud will rest with the banks, ultimately.

The UK government has given the banking industry a long lead-in time for this very reason and they are implementing the system and testing the new infrastructure as part of the implementation process. It is essential that the payment system is stable and secure as the system will only deliver genuine benefits for banks and customers if it is safe to use. Inbuilt security techniques and checks will be deployed by the banking industry to help prevent fraud. So, provided customers have kept to the terms and conditions of the bank account, they will be protected if they are an innocent victim of fraud, just as they are now.

The President: Mr Turner.

Mr Turner: Yes, thank you, Mr President, that was an interesting question.

I know we are getting into a little bit of detail, but I am just curious to know whether you have got the answer to this, hon. mover. Once you have paid the cheque in electronically, what do you

actually do with the paper copy? Do you just throw it away, or what happens with it? Yes, eat it! I can see a point where you will pay the thing in, put it in a drawer somewhere and then six weeks later think, 'Have I paid that in?' And I will try to pay it in again!

So, just out of curiosity, I am interested to know how the system works and what you do with the paper cheque once you have sent the image.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane, and I thank the Hon. Member for his intriguing question.

If I can answer it in two parts: if we look at the banking industry, obviously if the banks are presented with a paper cheque and they electronically scan it themselves for onward progression that will be held in their own files in the bank. But where a customer goes to an ATM – and we have yet to test this out, so I am speaking hypothetically – but I am given good cause to assume that would then be their own receipt of payment and they would be wise to hang on to that in their own file at home; hopefully not in a drawer as the Hon. Member has suggested, Eaghtyrane, but in their own home filing mechanism. **(Mr Turner: A drawer!)**

I think he may have another question?

The President: Mr Turner.

Mr Turner: I was just waving my phone at him, actually, sir.

Obviously he said in one of the speeches that it would include if you used your banking app on your phone, and photographed the cheque, it would be the same if you did it ... I would have thought going to the ATM it might take the cheque in and it goes off and stays in the machine somewhere. But if you use your banking app at home, then obviously you have only scanned the image so you have still got the bit of paper – that was the point I think I was making.

Mr Henderson: I thank the Member for clarifying that, Eaghtyrane, and yes, I think if an ATM were to physically take your cheque in and you do not get it back, then obviously that would be held within the bank. But 89D of the Act covers this particular issue and I am sure it will be set out more clearly in regulation as we go along. Certainly, if you were scanning a cheque at home with your own app, then obviously you would still have the paper copy and that would be your hard copy receipt which you would be wise to keep in your own file. **(Mr Crookall: Somewhere safe!)** Somewhere safe, yes.

The President: A brave new world, indeed!
Have you any concluding remarks, Mr Henderson?

Mr Henderson: Gura mie eu, Eaghtyrane.

Yes, I would just like to thank Hon. Members for their questions and interesting observations, and general support for what is indeed a brave new world. Hopefully it will produce faster processing of cheques, and the nonsensical situation that can arise if the plane at Ronaldsway is delayed for several days due to fog, or whatever, and which just happens to be holding a banking satchel full of cheques for clearing in the UK ... those days are nearly finished. So I look forward to that, Eaghtyrane.

Gura mie eu.

The President: Thank you, Mr Henderson, and thank you for your earlier clarification about the timescales involved, also.

Hon. Members, I put the question that clause 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

That brings us to the end of the clauses stage of this particular Bill and the business is therefore concluded. Council will now stand adjourned until the next sitting which will take place in Tynwald Chamber at 10.30 a.m. Tuesday next, Hon. Members.

The Council adjourned at 10.52 a.m.