MONEYLENDERS (AMENDMENT) BILL 2012

EXPLANATORY NOTES

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

1. Introduction

1.1 These explanatory notes relate to the Moneylenders (Amendment) Bill 2012. The Bill is promoted by the Treasury on behalf of the Office of Fair Trading ("OFT"). The notes 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.

1.2 The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

2. Background

2.1 The Moneylenders Act 1991 ("the Act") was introduced to regulate consumer borrowing and to protect consumers from unscrupulous lenders (or "loan sharks").

2.2 The legislation was however drafted so widely that it resulted in the unintended consequence of capturing any activity that falls within the definition of "carrying on in the Island the business of lending money". This potentially includes all lending of any type as it is presumed in the Act that a person who lends in the Island is carrying on a business of lending money (see section 1 of the Act).

2.3 Currently, all lending, including that which takes place, for example, in the course of normal corporate financing transactions and loans between group companies, potentially requires those wishing to make loans, to apply to the Office of Fair Trading ("OFT") for registration as moneylenders.

2.4 The Act currently does make provision for exemption from registration but only permits persons to be exempted on a case by case basis, by way of Regulation. Each person that wishes to apply for exemption must make an application to do so. There are costs associated with this approach, both in terms of resources and the time that is required bring the Regulations into operation.

2.5 Each new Regulation made under the Act must also be approved by Tynwald.

2.6 The inclusion of any and all lending within the scope of the Act, and the resulting requirement for registration as a moneylender under the Act, has long been regarded as unnecessary red tape which acts as a disincentive to doing business in and from the Isle of Man.

2.7 The Bill widens the scope of the OFT's powers of exemption. The new powers will enable the OFT to exempt lending of, for example, particular classes and transaction types where it is clear that this lending was never intended to fall within the scope of the Act.

3. Overview of clauses

3.1 Clause 1 gives the Act resulting from the Bill its short title.

3.2 Clause 2 provides for the Bill to come into operation on one or more days appointed by the Treasury and caters for the making of transitional and saving provisions.

3.3 Clause 3 sets out the amendments that are to be made to the Moneylenders Act 1991.

Subsection (2) amends section 1(4) of the Act by inserting new subsections (4) and (4A). The effect of this is to enable transactions as well as persons to be exempted. The offences under the Act are widened accordingly to consider that a person carrying on in the Island the business of lending money commits an offence unless the person is an exempt person or the lending is an exempt transaction.

New subsection (6) defines what it meant by exempt transaction.

Subsection (3) inserts new subsections (1A) to (1F) in section 17 of the Act.

The effect of this is to widen the scope of the exemptions from those currently permissible under the Act. This widened scope enables persons, classes of persons, transactions, classes of transactions or those persons or transactions that can be defined by activity or other allowable factor, to be exempted from the requirement to register under the Act.

The new power considers the length of time for which an exemption can be granted. This can now be either for a limited time or for an unlimited time, at the discretion of the OFT.

Subsection (4) amends section 18 of the Act, reflecting a change of terminology.

Other points

The Bill —

(a) is not expected to give rise to any additional public expenditure or public revenue; and

(b) is considered to be compatible with the Convention rights within the meaning of the Human Rights Act 2001.