



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

## **FINANCIAL EFFECTS OF THE BILL**

6. The Bill potentially has financial implications, both costs and benefits, for the banking industry. Cheque imaging will allow the banking industry to operate a much more efficient and cost-effective payment system by removing the need to affect the physical delivery of cheques. However, in order to implement cheque imaging, the banking industry has been required to invest in a network for the central exchange of cheque images and data. The impact across the banking industry has yet to be determined.

7. An Impact Assessment of the Bill has been prepared by the Treasury and it is attached as Appendix 1 to these notes.

## **CLAUSE BY CLAUSE NOTES**

### **Clause 1**

8. This clause gives the short title to the Act which will, if enacted, result from the Bill.

### **Clause 2**

9. This clause provides that the Act will come into operation via an Appointed Day Order.

### **Clause 3**

10. This clause provides for the Act to expire on the day after its promulgation, if all its provisions are in operation or else after the last provision is brought into operation. This is to prevent dead wood littering the Statute Book.

### **Clause 4**

11. This clause provides for the Bills of Exchange Act 1883 to be amended to provide for the presentment of cheques and other instruments by electronic means.

12. Subsection (2) of clause 4 inserts Part 4A (sections 89A – 89F) into the Bills of Exchange Act 1883.

*Section 89A*

13. In the new section 89A, subsection (1) provides that a relevant paper payment instrument may be presented by providing an electronic image of the front and back of the instrument.

Subsections (2) and (3) enable the Treasury to make regulations to restrict the circumstances in which presentment by image is permissible.

Subsections (4) to (6) remove existing requirements that apply to the presentment of a cheque or other instrument that would be inconsistent with presentment in an electronic system, such as the exhibition, presentment and delivery of the paper instrument itself, and a particular place and time of presentment.

Subsection (7) ensures 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*

14. The new section 89B describes the types of payment instrument that may be presented under section 89A. Key requirements are that the instrument is one which enables a person to obtain payment from a banker, that it is an instrument that must be presented for payment, and that it could not otherwise be presented electronically.

*Section 89C*

15. The new 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*

16. The new section 89D enables Treasury to make regulations requiring a bank that pays a cheque or similar instrument to provide a copy of the instrument to the paying customer on request, and providing that this copy stands as evidence that the sum payable has been received.

*Section 89E*

17. In the new section 89E, subsection (1) enables the Treasury to make regulations allowing claims for compensation for certain types of loss arising out of electronic

presentment of an instrument to be made against the bank which is responsible for collecting the funds on behalf of the customer (that also being, in almost all circumstances, the bank which is responsible for the decision about how and by whom the electronic image is created). The regulations may also cover situations where there is no proper presentment, for example where there is no valid underlying instrument or the instrument did not qualify for electronic presentment. Such regulations could, for example, provide for a claim by the drawer of a cheque or the bank that paid the cheque where the payment was made to the wrong account because of a defect in the image, or where the image had been created fraudulently.

Subsection (5) enables the regulations to provide for strict liability, and for the liability to be reduced by the contributory negligence of the claimant.

Subsection (6) ensures that if a bank has to pay compensation under the regulations, it is not prevented from making a claim against another party for a contribution towards the compensation.

#### *Section 89F*

18. The new section 89F contains supplementary provisions about the making of regulations under Part 4A.

#### *Consequential amendments*

19. Clause 4(3) makes minor consequential amendments to the 1883 Act. Paragraph (a) inserts wording into section 52(4) to make reference to the presentment by electronic means while paragraph (b) deletes section 52(5) which becomes redundant in consequence of the repeal of section 74B below.

21. Clause 4(4) omits section 74B which provides for alternative means of presentment of cheque for payment by banker.

22. Clause 4(5) inserts wording into section 87 to make reference to the presentment by electronic means.

23. Clause 4(6) provides that the amendments made by clause 4 apply in relation to all instruments to be presented after the Act has come into force including those created before that time.

**DEPARTMENT: TREASURY****IMPACT ASSESSMENT OF: BILLS OF EXCHANGE (AMENDMENT) BILL 2016****Stage:****Version: 1****Date: October 2016****Related Publications: [UK Consultation on Speeding up cheque payments](#)****Responsible Officer: Rose Dawson, Policy and Legislation Section, Corporate Strategy Division, Treasury****Email Address: [rose.dawson@gov.im](mailto:rose.dawson@gov.im)****Telephone: (01624) 685037****SUMMARY: INTERVENTION AND OPTIONS****Briefly summarise the proposal's purpose and the intended effects**

The purpose of the Bills of Exchange (Amendment) Bill is to make provision in Manx Law corresponding to section 13 of the Small Business, Enterprise and Employment Act 2015 (of Parliament) (the 2015 Act) which facilitates the use of electronic imaging in the presentment of cheques in place of the physical delivery of cheques themselves.

Currently cheques are physically transported from bank or building society branches to central clearing centres where they are processed before being exchanged with the relevant banks and building societies for payment. It is a slow and labour-intensive process required under the current law.

Cheque imaging will enable a faster clearing cycle, meaning businesses and consumers receive their funds more quickly. It will provide significant savings for the banking industry as running the payment system will be more efficient and cost-effective. This will help future-proof the cheque as a sustainable payment option that financial institutions can afford to continue to provide. Cheque imaging will also encourage greater competition in retail banking by helping smaller banks to compete with incumbents where they lack an established physical branch network.

Within the proposed amendments, cheques will still have to be written on paper chequebooks (or, for business customers, printed in an agreed format). The customer who receives the cheque will then have a choice of options for paying in the cheque:

- take the paper cheque (or send it by post) to their bank branch, where it is scanned by staff and an image sent electronically;
- deposit the paper cheque at an image-enabled ATM, where it is scanned automatically and an image sent electronically; or
- use a smart phone, scanner or other mobile device to capture an electronic image of the cheque and pay this in to their bank, possibly via their bank's mobile banking app.

Treasury is working with the other Crown Dependencies to ensure we introduce equivalent measures that mirror section 13 of the 2015 Act.

The Bill will amend primary legislation which in turn will provide enabling powers. The UK will be making their regulations once the Image Clearing System is fully tested. The Isle of Man will need to make the same regulations and undertake further consultation with the banking industry once the primary legislation has been enacted. It is expected that, as with the changes to the primary legislation, the Isle of Man regulations will be virtually a direct copy of the UK regulations.

**What are the options that have been considered*****Option 1: Do nothing***

This is not a viable option. The Cheque & Credit Clearing Company, which is a non-profit making industry body owned by leading banks and building societies in the UK, as direct clearing members of the system, is building a new infrastructure to allow for the clearing and settlement of cheques and other instruments that are presented electronically. All members wish to be able to use the

Image Clearing System for all their branches for the benefit of their customers, therefore all cheques and other instruments need to be capable of effective electronic presentment, by, or to, their branches, wherever they may be located.

**Option 2: Mirror UK legislation – chosen option**

By introducing primary legislation equivalent to section 13 of the UK's Small Business, Enterprise and Employment Act 2015 there will be no disparity with UK banks. Isle of Man licensed banks will therefore be able to accept an electronic image of a cheque or other instrument as being equivalent to the original paper instrument for the purposes of presentment. This will ensure that the Isle of Man has a robust legal framework that allows for electronic presentment of cheques and other instruments so that branches in the Isle of Man can clear cheques electronically and crucially offer a uniform customer proposition for a faster clearing cycle.

No other options have been identified.

**Link to Government Strategic Plan**

Grow the Economy

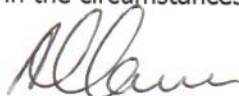
**Link to Department/Statutory Board/Office Aims and Objectives**

To support and grow our economy,

**Ministerial sign off**

I have read the Impact Assessment and I am satisfied that the balance between the benefit and any costs is the right one in the circumstances.

Signed by the Minister



Date:

9/11/16.

**SUMMARY: ANALYSIS AND EVIDENCE**

**IMPACT OF PROPOSAL**

**Resource Issues - Financial (including manpower)**

**Statement**

Cheque imaging will allow the banking industry to operate a much more efficient and cost-effective payment system, bringing the cost of cheque payments closer into line with the cost of fully electronic payment systems. The impact will extend to all banks that provide cheque payment services in the UK and Crown Dependencies; the distribution of these savings across individual financial institutions has yet to be determined by the industry.

The UK Government is estimating that there could be net benefits of nearly £94 million a year across the board however the distribution of these savings has yet to be determined.

**Likely Financial Costs**

There are no IoM Government financial implications.

As a one-off external industry cost in order to implement cheque imaging, the banking industry has been required to invest in a network for the central exchange of cheque images and data. The distribution of this cost across the individual financial institutions has yet to be determined by the industry.

**Likely Financial Benefits**

None identified for IoM Government.



Electronic cheque imaging should provide significant savings for the banking industry, as the system will be more efficient and cost-effective. This may have some knock-on effect for customers but is at present unknown.

**Are there any costs or benefits that are not financial i.e. social**

Business and voluntary sectors will benefit from faster cheque clearing times and from the improved choice and convenience in ways to pay, with new options to deposit cheques by smartphone, scanner or other devices. For customers in rural areas, or with limited mobility, this expansion of choice may help overcome barriers to financial inclusion. Particular benefits will accrue to small businesses and charities, which continue to depend heavily on cheque payments and generally have tighter budget constraints, standing to gain a great deal from faster cash-flow.

Providing recipients of cheques with greater convenience in how they deposit will also cut down the time it takes for the payment to complete, as today there is often a delay before deposit with customers needing to find a physical branch and to pay in during banking hours.

**Which business sectors/organisations will be impacted, if any, and has any direct consultation taken place?**

Banking Industry – direct consultation carried out with Isle of Man Bankers Association and also through the Chamber of Commerce.

**Does the proposal comply with privacy law? Please provide a brief statement as to any issue of privacy or security of personal information.**

In line with their usual data protection requirements banks will need to embed appropriate privacy protection measures.

**Has Treasury Concurrence been given for the preferred option**

Date of Treasury Concurrence 23 March 2016

**Key Assumptions / Sensitivities / Risks**

The Isle of Man must have a robust legal framework that allows for and recognises as effective, electronic presentment of cheques and other instruments so that these branches in the Isle of Man can clear cheques electronically and crucially offer a uniform customer proposition for a faster clearing cycle.

**Approximate date for legislation to be implemented if known**

The timings for industry implementation of the measures are currently being finalised. The UK Government is working with industry to identify the most appropriate date for implementation and will bring their new legislation into force to meet the identified timetable. The Isle of Man Government will work alongside the UK implementation dates.

**SUMMARY: CONSULTATION**

Consultation in line with Government standard consultation process **No**

Date 1<sup>st</sup> Consultation May 2016

**Summary of Responses:**

The Code on Consultation gives Ministers discretion not to conduct a formal written consultation exercise under the terms of the Code where there is a very limited number of interested parties who have been directly involved in the policy development process.

Consultation has been undertaken with the Isle of Man Bankers Association and they are content with the legislation. Informal consultation has also been undertaken with the Chamber of Commerce where it was explained that the legislation was industry specific and that it was necessary to replicate the UK legislation. The response to this approach was positive.

In line with the requirements of the Code Treasury will issue a press notice to inform the public of the proposed new legislation, the benefits it will provide and the fact that a public consultation is not planned.