



Isle of Man

Ellan Vannin

**BILLS OF EXCHANGE (AMENDMENT) BILL
2016**

BILLS OF EXCHANGE (AMENDMENT) BILL 2016

Explanatory Memorandum

1. This Bill is promoted by Mr Shimmins, MHK.
2. The Bill's purpose is to make provision in the law of the Island corresponding to section 13 of the Small Business, Enterprise and Employment Act 2015 (of Parliament: "the 2015 Act") the purpose of which is to facilitate the use of electronic imaging in the presentment of cheques in place of the physical delivery of cheques themselves.
3. *Clauses 1 to 3* provide for the short title, commencement and repeal of the Act resulting from the Bill. The repeal will take effect on the day after promulgation or the day of the coming into operation of the last of its provisions, whichever is later.
4. *Clause 4* inserts a new Part 4A into the *Bills of Exchange Act 1883* ("the 1883 Act") in the same way that the 2015 Act amends the Bills of Exchange Act 1882 (of Parliament). This will 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. The clause also makes minor consequential amendments to other provisions of the 1883 Act.
5. An impact assessment has been prepared for the Bill: it is likely to reduce costs for the Island's banks by removing the need to effect the physical delivery of cheques to the customer's branch for presentment or to an alternative address provided under section 74A of the 1883 Act.
6. 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*.



Ellan Vannin

BILLS OF EXCHANGE (AMENDMENT) BILL 2016

Index

Section	Page
1 Short title.....	7
2 Commencement.....	7
3 Expiry.....	7
4 Electronic paying in of cheques etc.....	7



Ellan Vannin

BILLS OF EXCHANGE (AMENDMENT) BILL 2016

1 **A BILL** to amend the Bills of Exchange Act 1883; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

2 **1 Short title**

3 The short title of this Act is the Bills of Exchange (Amendment) Act 2016.

4 **2 Commencement**

5 (1) This Act comes into operation on such day as the Treasury may by order
6 appoint.

7 (2) An order under subsection (1) may include such consequential,
8 incidental, supplemental and transitional provision as appears to the
9 Treasury to be expedient.

10 **3 Expiry**

11 (1) This Act is repealed on the day following its promulgation, or the day
12 following the coming into operation of the last of its provisions,
13 whichever is later.

14 (2) Subsection (1) does not—

15 (a) affect the continuing effect of the amendments made by section 4;
16 or

17 (b) revive anything repealed by the previous operation of the Act.

18 **4 Electronic paying in of cheques etc**

19 P2015/26/13

20 (1) The *Bills of Exchange Act 1883* is amended as follows.

21 (2) After section 89 insert—

1 **“PART 4A — PRESENTMENT OF CHEQUES AND OTHER**
2 **INSTRUMENTS BY ELECTRONIC MEANS**

3 **89A Presentment of instruments by electronic means**

4 P1889/61/89A

- 5 (1) Presentment for payment of an instrument to which this section
6 applies may be effected by provision of an electronic image of
7 both faces of the instrument, instead of by presenting the physical
8 instrument, if the person to whom presentment is made accepts
9 the presentment as effective.

10 This is subject to regulations under subsection (2) and to section
11 89C.

- 12 (2) The Treasury may by regulations prescribe circumstances in
13 which subsection (1) does not apply.

- 14 (3) Regulations under subsection (2) may in particular prescribe
15 circumstances by reference to—

- 16 (a) descriptions of instrument;
17 (b) arrangements under which presentment is made;
18 (c) descriptions of persons by or to whom presentment is
19 made;
20 (d) descriptions of persons receiving payment or on whose
21 behalf payment is received.

- 22 (4) Where presentment for payment is made under subsection (1) the
23 following do not apply—

- 24 (a) any requirement—
25 (i) that the physical instrument must be exhibited,
26 presented or delivered on or in connection with
27 presentment or payment (including after
28 presentment or payment or in connection with
29 dishonour for non-payment), or
30 (ii) as to the day, time or place on or at which
31 presentment of the physical instrument may be or is
32 to be made, and

- 33 (b) any other requirement which is inconsistent with
34 subsection (1).

- 35 (5) Subsection (4) does not affect any requirement as to the latest time
36 for presentment.

- 37 (6) References in subsections (4) and (5) to a requirement are to a
38 requirement or prohibition, whether imposed by or under any
39 enactment, by a rule of law or by the instrument in question.

- 1 (7) Where an instrument is presented for payment under this
2 section—
3 (a) any banker providing the electronic image,
4 (b) any banker to whom it is provided, and
5 (c) any banker making payment of the instrument as a result
6 of provision of the electronic image,
7 are subject to the same duties in relation to collection and
8 payment of the instrument as if the physical instrument had been
9 presented.
10 This is subject to any provision made by or under this Part.

11 **89B Instruments to which section 89A applies**

12 P1882/61/89B: sub (2) derived from P2009/1/208.

- 13 (1) Subject to subsection (2), section 89A applies to—
14 (a) a cheque, or
15 (b) any other bill of exchange or any promissory note or other
16 instrument—
17 (i) which appears to be intended by the person creating
18 it to enable a person to obtain payment from a
19 banker indicated in it of the sum so mentioned,
20 (ii) payment of which requires the instrument to be
21 presented, and
22 (iii) which, but for section 89A, could not be presented
23 otherwise than by presenting the physical
24 instrument.
25 (2) Section 89A does not apply to any banknote, that is to say a
26 promissory note, bill of exchange or other document which—
27 (a) records an engagement to pay money,
28 (b) is payable to the bearer on demand, and
29 (c) is designed to circulate as money.
30 (3) The reference in subsection (1) to the person creating an
31 instrument is—
32 (a) in the case of a bill of exchange, a reference to the drawer;
33 (b) in the case of a promissory note, a reference to the maker.
34 (4) For the purposes of subsection (1)(b)(i) an indication may be by
35 code or number and need not indicate that payment is intended to
36 be obtained from the banker.

1 **89C Banker's obligation in relation to accepting physical instrument**
2 **for presentment**

3 P1882/61/89C

4 Provision of an electronic image of an instrument does not constitute
5 presentment of the instrument under section 89A if the arrangements
6 between—

- 7 (a) the banker authorised to collect payment of the instrument
8 on behalf of a customer, and
9 (b) that customer,

10 do not permit the customer to pay in the physical instrument but instead
11 require an electronic image to be provided (whether to that banker or to
12 any other person).

13 **89D Copies of instruments and evidence of payment**

14 (1) The Treasury may by regulations make provision for—

- 15 (a) requiring a copy of an instrument paid as a result of
16 presentment under section 89A to be provided, on request,
17 to the creator of the instrument by the banker who paid the
18 instrument;
19 (b) a copy of an instrument provided in accordance with the
20 regulations to be evidence of receipt by a person identified
21 in accordance with the regulations of the sum payable by
22 the instrument.

23 (2) Regulations under subsection (1)(a) may in particular—

- 24 (a) prescribe the manner and form in which a copy is to be
25 provided;
26 (b) require the copy to be certified to be a true copy of the
27 electronic image provided to the banker making the
28 payment on presentment under section 89A;
29 (c) provide for the copy to be accompanied by prescribed
30 information;
31 (d) require any copy to be provided free of charge or permit
32 charges to be made for the provision of copies in
33 prescribed circumstances.

34 (3) The reference in subsection (1)(a) to the creator of the instrument
35 is—

- 36 (a) in the case of a bill of exchange, a reference to the drawer;
37 (b) in the case of a promissory note, a reference to the maker.

89E Compensation in cases of presentment by electronic means

P1882/61/89E

- (1) The Treasury may by regulations make provision for the responsible banker to compensate any person for any loss of a kind specified by the regulations which that person incurs in connection with electronic presentment or purported electronic presentment of an instrument.
- (2) In this section “electronic presentment or purported electronic presentment of an instrument” includes—
- (a) presentment of an instrument to which section 89A applies under that section;
 - (b) presentment of any other instrument by any means involving provision of an electronic image by which it may be presented for payment;
 - (c) purported presentment for payment by any means involving provision of an electronic image of an instrument that may not be presented for payment in that way;
 - (d) provision, in purported presentment for payment, of—
 - (i) an electronic image that purports to be, but is not, an image of a physical instrument (including an image that has been altered electronically), or
 - (ii) an electronic image of an instrument which has no legal effect; or
 - (e) provision, in presentment or purported presentment for payment, of an electronic image which has been stolen.
- (3) In this section, the “responsible banker”, in relation to electronic presentment or purported electronic presentment of an instrument, means—
- (a) the banker who is authorised to collect payment of the instrument on a customer's behalf, or
 - (b) if the holder of the instrument is a banker, that banker.
- (4) In this section—
- (a) references to an instrument include references to an instrument which has no legal effect (whether because it has been fraudulently altered or created, or because it has been discharged, or otherwise);
 - (b) in relation to an electronic image which is not an image of a physical instrument, references to the instrument are to a purported instrument (of which it purports to be an image); and

(c) in relation to an instrument which is not a bill of exchange or promissory note, references to the holder are to the payee or indorsee of the instrument who is in possession of it or, if it is payable to bearer, the person in possession of it.

(5) Regulations under this section may in particular make provision for—

(a) the responsible banker to be required to pay compensation irrespective of fault;

(b) the amount of compensation to be reduced by virtue of anything done, or any failure to act, by the person to whom compensation is payable.

(6) Nothing in this section or regulations under it is to be taken to—

(a) prevent the responsible banker claiming a contribution from any other person, or

(b) affect any remedy available to the responsible banker in contract or otherwise.

(7) Except so far as regulations under this section provide expressly, nothing in this section or regulations under it is to be taken to affect any liability of the responsible banker which exists apart from this section or any such regulations.

89F Supplementary

P1882/61/89F

(1) Regulations under this Part may—

(a) include incidental, supplementary and consequential provision;

(b) make transitory or transitional provision or savings;

(c) make different provision for different cases or circumstances or for different purposes;

(d) make provision subject to exceptions.

(2) Regulations under this Part must not come into operation unless approved by Tynwald,

(3) For the purposes of this Part, a banker collects payment of an instrument on behalf of a customer by—

(a) receiving payment of the instrument for the customer, or

(b) receiving payment of the instrument for the banker (but not as holder), having—

(i) credited the customer's account with the amount of the instrument, or

- 1 (ii) otherwise given value to the customer in respect of the
2 instrument.
- 3 (4) Section 89E(4) applies for the purposes of subsection (3) in its
4 application to section 89E.”.
- 5 (3) In section 52 (bills of exchange: duties of holder on presentment and
6 payment)—
- 7 (a) at the beginning of subsection (4) insert “Subject to Part 4A
8 (presentment by electronic means),”; and
- 9 (b) omit subsection (5).
- 10 (4) Omit section 74B (which provides for alternative means of presentment
11 of cheque for payment by banker).
- 12 (5) In section 87 (promissory notes: presentment for payment), at the end
13 insert—
- 14 “(4) This section is subject to Part 4A (presentment by electronic
15 means).”.
- 16 (6) The amendments made by this section have effect in relation to
17 presentment of instruments after it comes into force, including
18 instruments created before that time.
19

IN THE KEYS

BILLS OF EXCHANGE (AMENDMENT) BILL 2016

A **BILL** to amend the Bills of Exchange Act 1883; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR SHIMMINS

NOVEMBER 2016