

Moneylenders (Amendment) Bill 2012
First Reading approved

5. Mr Lowey to move:

That the Moneylenders (Amendment) Bill 2012 be read a first time.

The President: Item 5, the Moneylenders (Amendment) Bill 2012. I call on Mr Lowey to take the First Reading.

Mr Lowey: Thank you, Madam President.

This Bill, the Moneylenders (Amendment) Bill 2012 has been promoted by the Treasury on behalf of the Office of Fair Trading. In 1991, the Moneylenders Act was introduced to regulate consumer borrowing in the Isle of Man. It was aimed at protecting consumers from unscrupulous lenders. As someone who was here in 1991, the Bill was quite clearly focused on dealing with people who were lending money to people at extortionate rates and collecting it almost on a weekly basis. It was a specific. I mentioned earlier this morning about unintended consequences: the Moneylenders Bill 1991 is a classic of that of its type. I will explain that later on.

There is a presumption in the Act that any person who lends in the Island is carrying on a moneylending business and this arises from the wording of section 1 of the 1991 Act, which requires the Office of Fair Trading to register *any* persons carrying on in the Island the business of lending money. All lending of any type has the potential to fall within this definition. The Act does not distinguish between different types of lenders and borrowers, lending to consumers and that which takes place in the normal course of business receives the same treatment under the Act.

The current position is that all persons who wish to lend must either register with the Office of Fair Trading, or apply for an exemption from the requirement to register. Lending to and from businesses is an accepted part of the normal business activity that takes place throughout the world on a daily basis. This type of lending is often referred to as corporate financing.

In the Isle of Man, in order to comply with the Act, persons that engage in these types of transactions must enter register or apply for exemption from registration. Registration and exemption from registration are not mere formalities. Each exemption requires separate regulations to be made for each person or group of persons. These regulations must then all be approved by Tynwald. This is a time-consuming distraction to remove lending that was never intended to be caught up by in this Act.

This is seen to be unnecessary red tape and inhibits business. There is strong evidence to suggest that this 1991 Act is a disincentive to doing business in and from the Island. This Bill will widen the scope of the Office of Fair Trading's power of exemption by regulation. The new powers will enable the Office of Fair Trading to exempt *all* lending within defined parameters and where it was clearly never intended to fall within the scope of the Act. This could include, for example, lending between companies within the same group.

While whole classes and types of lending not meeting the criteria for consumer-type lending could be exempted, the Office of Fair Trading would still need Tynwald approval, prior to introducing these five classes of exemption.

That is the basis of this particular Bill. It is an interim measure, I may add, Hon. Members. The long-term solution is for moneylending to be controlled by the FSC, as opposed to the Office of Fair Trading, but that is a fair bit down the road and this particular Bill was seen as an interim measure to alleviate business from the restrictions that the present, the 1991 Act has been deemed legally to be interpreted the way it was not intended to. So this is an interim measure and I would urge the House to support it to relieve businesses from unnecessary red tape.

Mr Braidwood: I beg to second, Madam President and reserve my remarks.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I would like to speak in support of the Bill. I understand quite clearly where the mover is coming from, because what we are doing to some extent is hamstringing corporate entities, large businesses, and how the financing of a ship or aircraft has to be dealt with under the money laundering legislation is something that has been a mystery to me for some time. I do not think that, back in 1991 when I was here also, we ever envisaged that we would have a commercial sector that has grown to such an extent.

I think that the Bill has worked very well in the past in some areas, because it has afforded protection for people at the bottom end of the ladder who have had some protection from people who might be a bit more

ruthless lending money. One only has to follow what is going on in the UK and other areas and see the social problems that exist now, because of debt and the way some ruthless moneylenders are getting involved and charging people absolutely exorbitant rates on borrowings. Quite rightly, in my opinion, this is an area that should be very closely regulated and monitored, particularly when we are dealing with people who are on hard times and have not got the resources or the opportunity of seeking advice to some extent about their debt problems.

I get a little concerned when the Hon. Member says that the plan is to have all this controlled by the FSC in the future, because I am not certain that the FSC could be as hands-on as we have seen with the Office of Fair Trading, where you have, in effect, a proper full-blown citizens' advice system, where a person can come in at any time off the street. They can refer them to debt counselling, they can do all sorts of other things.

There is quite a clear line in the legislation. We are trying to take out or exempt, or give the opportunity for the regulations made under the Act to look at various business activities, which really, in my opinion, are not part of the day-to-day operation of what a moneylender actually does. I fully support that, but in the future, we have got to send the message out that, as people find times are getting a bit harder, there will be more and more debt about and we have got to make absolutely certain, in the Isle of Man, that we do not have unscrupulous people involved in moneylending or seeking to bring exorbitant borrowing rates onto the unwary.

I support the Bill and see where the Member is coming from and I will be interested to see what any of my other colleagues have got to say about this issue.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

I am very happy to support this Bill. When it came in, it was not intended to get into this sort of tangle, because it was brought in – according to the notes we were given anyway – to regulate consumer borrowing from, essentially, loan sharks. That is what it was all about.

The way it has now turned out is a bit strange, but why has it taken 21 years to find that this is wrong with the Bill – that is the first thing I would ask; and what was it that promoted this Bill to be brought forward? Where did the impetus come from, to make these amendments? It seems an extraordinarily long time for that to be hanging around to be wrong.

When Mr Lowey says 'anyone who lends money in the Isle of Man', that does have to be narrowed down to people who do it as a business. If I were to lend Mr Lowey, say, £10,000 at a low interest rate – it is very unlikely, but it is possible – I hope we would not come under this, that we would not come under the provisions of this Bill.

Thank you, Madam President.

The President: The mover to reply please.

Mr Lowey: First of all, can I thank both Members for the reason why it has taken 21 years. It is because of the legal interpretation. I think the OFT for years actually practised as they thought, it was the intent. It was queried and then it was suddenly pointed out by the Attorney General's Office that that was not the interpretation.

I used the thing before about unintended consequences and my good friend, when he was replying to another question, said, would I give an assurance, but we all know round this table, those assurances mean naught. It is the written primary law that is interpreted by the judiciary, not the intent of the people sitting round the table. We have had it, chapter and verse, throughout.

Mr Callister, as a political reporter in his former life, would have sat through the electricity debates when we said we were going to do it and phase it in for Douglas Corporation. We were told that was the reason it was going to be done. We then discovered, because we had passed it, it did not mean that at all, never mind the assurance we were given, so we had to pass some primary legislation pretty handy to rectify it.

This is really the consequences of this. Can I just say, that is the reason why it has taken so long. It was practised in good faith and now we are told, it is not, it has got to be rectified, so we are rectifying it. Why? Because people who attract businesses here to the Isle of Man and have to advise their clients, have got to tell the law as it is. There is chapter and verse and I have seen the evidence, that it acts as an inhibitor for inward investment, for companies coming here. Many of the companies are subsidiaries of national companies, international companies and if they have to be classified as a lender of money, as there is interflow of capital between businesses and that is not what the Bill was intended for anyway, so it does act as an inhibitor and we have to rectify that.

I hope I did not upset my good friend, Mr Downie, too much. The proposal, I say, is an interim measure, but the IMF in a report that it gave on the finances of the Isle of Man and gave it a good thumbs up, pointed out that this was an area that was not covered by the financial supervision and they thought it should be, especially the

business element, not the ordinary. That will then be debated – that is the intention. We have consulted with the OFT, we have consulted with the industry, we have consulted with the FSC and there is a framework of future legislation that will be – it is not finalised yet, but it will be the FSC who will deal with the business element, the day-to-day, small borrowings will still be done by the OFT. There is a clear division and I think that will be the end result.

So I want to reassure the Hon. Member, that while highlighting that or flagging it up at this stage was not to say that there is a final deal, but we are in the consultation business and we have general approval throughout the business world. We went out to public consultation and it has all been done in this past year.

So the Bill is dealing with a specific. I thank Hon. Members for their support and I beg to move the First Reading of the Bill.

The President: The motion is that the Bill be read the first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of our Order Paper, Hon. Members. I would just like to remind everyone that we do have an opportunity to meet our Shetland visitors at lunchtime, one o'clock.

Council will now adjourn until 6th November.