

**Moneylenders (Amendment) Bill 2012**  
**Second Reading approved**

1. Mr Lowey to move:

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

**The President:** We move to the Second Reading of the Moneylenders (Amendment) Bill.  
I call on Mr Lowey.

**Mr Lowey:** Thank you, Madam President.

This Bill seeks to address the scope of the Moneylenders Act 1991, which has been, since the Act was brought into operation, far wider than was originally intended. The Act was intended to ensure that those who engage in the business of lending money to consumers were required to register with the Office of Fair Trading as moneylenders. The Act currently presumes that any person who lends money in the Island is carrying on the business of lending money.

The drafting of the relevant provisions in the Act is all-inclusive. This means that lending that occurs in the course of normal business activities is currently within the scope of the legislation. Those transactions that, for example, occur during the normal course of corporate financing and lending between companies within the same group are also caught within the scope of the Act. This was never the intention of the 1991 Act.

The Act currently does allow some persons to apply for exemption from the requirement to register under the Act, but this must currently be done on a case-by-case basis. This is achieved under the power in the Act to make regulations. These regulations require the approval of Tynwald. This is resource intensive. It has been identified by those that are attracting and retaining business on the Island as a factor that may act as a disincentive to do business in and from the Isle of Man. It is deemed as unnecessary and, in many cases to the recipient, red tape.

The Moneylenders (Amendment) Bill widens the scope of the definition of persons and groups that can apply for exemption. This would enable whole classes of persons who were never intended to be caught under the Act to be exempted under a single set of regulations.

Madam President, I beg to move the Second Reading of the Moneylenders (Amendment) Bill be read.

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

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Yes, a classic case of the law of unintended consequences.

Again, I will be supporting the Bill because it is more business friendly. It will help inter-company loans between group companies and so I think it is a good move on the part of the Treasury to bring this forward because they have seen an opportunity to improve the business climate, shall we say.

**The President:** Mr Lowey to reply.

**Mr Lowey:** I thank Mr Crowe for his support and for Council's support at the First Reading.

Mr Crowe is absolutely right, and we have listened. We have consulted widely and we have taken special note of the people who are attracting and retaining business and expanding business who are like the engines of business in the Isle of Man. Their views have been taken into consideration and they support this particular Bill.

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

**Moneylenders (Amendment) Bill 2012**  
**Clauses considered**

**The President:** Clauses. Perhaps we could take clauses 1 and 2 together?

**Mr Lowey:** Yes, indeed. Thank you, Madam President.

This Bill is a small Bill. Clause 1 is the short title and I do not think I need to elaborate too much on that.

Clause 2 provides for the Bill to come into operation on one or more days appointed by the Treasury. Provision is also made to allow the Treasury to make saving and transitional provisions by order. In other words, it is... *[Inaudible]*

I beg to move that clauses 1 and 2 stand part of the Bill.

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

**The President:** The motion is that clauses 1 and 2 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 3.

**Mr Lowey:** Thank you, Madam President.

Clause 3 seems a little bit more complicated, but I hope I will be able to subscribe and it actually enables to enact what I said in my speech into practice.

Clause 3(2)(a) replaces the existing subsection (4) of section 1 of the original Act. The new subsection (4) widens the scope of those persons eligible to apply for exemption, from persons to include transactions. So it widens it.

New subsection (4A) replicates and renumbers the existing offences and penalties for failure to register as a moneylender when required to do so.

Clause 3(2)(b) inserts the definition of 'exempt transaction'.

Clause 3(3) widens the power to make regulations under section 17 of the Act.

New subsections (1A) to (1F) are inserted in the Bill.

New subsections (1B) and (1C) clarify that exemptions from the requirement to register under the Act can now include – and I will just quote three – certain types and classes of persons; persons who conduct certain definable activities; and certain definable transactions or whole classes of transactions of a particular type.

New subsections (1D) and (1E) introduce a new power that will enable exemptions to be granted under subsections (1B) and (1C) including – and there are four – for a limited or unlimited period of time; unlimited or limited in scope of application; and the application only to certain types of moneylending; and in respect of certain transactions or those carried out by certain types of persons – businesses.

New subsection (1F) updates the Act by inserting additional powers that provide for a degree of flexibility in respect of unforeseen circumstances. This is not a new formula. This legislation has been enacted more recently and it contains equivalent provisions as standard.

Clause 3(4) replaces an outdated reference to legislation that has been superseded, and while the Interpretation Act 1976 ensured that this outdated reference did not render the provision ineffective, it seemed logical, and to take advantage of the opportunity, to do a little legislative housekeeping.

Madam President, I beg to move that clause 3 stand part of the Bill.

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

**The President:** Hon. Member, Mr Downie.

**Mr Downie:** Thank you, Madam President.

At the previous First Reading, reference was made to the fact that there was going to be a shared... or implied that there was going to be some sort of a shared authority – for example, some of the areas that could be exempt under this legislation would be overseen by the Financial Supervision Commission – and then we discussed the Office of Fair Trading and their role in all this. At the end of the day, this is the legislation which allows them to operate under at the present time.

So the first query I have is who determines whether an issue is exempt or not? Will it be the OFT or will it be the Financial Supervision Commission?

An interesting comment on subclause (1F) on page 8, where Mr Lowey referred to:

'... transitory provisions as the Board considers necessary or appropriate.'

Is that actually coming out now or is that staying in, because if it is staying in, as I understand it, neither of these organisations have boards anymore.

**The President:** The Hon. Member, Mr Callister.

**Mr Callister:** Thank you, Madam President.

The Bill, as we are told in the explanatory notes, is promoted by the Treasury, but on behalf of the Office of Fair Trading, and partly perhaps answering Mr Downie's question, 2.7 of the explanatory notes says:

'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.'

That again takes us back to the fact that there were intentions here that worked out wrongly on it.

As the Vice-Chairman of the Office of Fair Trading, we have to deal with... a great deal of officers' time is spent on people who have borrowed money from moneylenders and it has become quite a serious area for people borrowing in the Isle of Man. It is quite clearly not the sort of thing a bank to bank and financial institutions, a financial institution, and that is where the separation should come in, but I will be interested to hear what the mover has to say.

**The President:** The Hon. Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

Yes, again, in supporting this clause there were just one or two items that I had to go back to the original Act just to look at. Under clause 17 of the Regulations under the 1991 Act, I was pleased to see that the Regulations under this Act:

'... shall not have effect unless they are approved by Tynwald.'

So whatever orders are brought by Tynwald.

Again, just for clarification, I think Mr Downie picked up an interesting point under the use of the word:

'... as the Board considers'.

Under the 1991 Act, under the interpretation clause 18 in this Act, the 'Board' means the Isle of Man Office of Fair Trading. So I can understand once you get to the interpretation it clarifies that; but the use of the word 'Board' as against the use of the word 'Office' can confuse in primary legislation. So I think there is a saving grace, shall we say, to cover that point. But again, I will be supporting this?

It is interesting, just in conclusion, to see what is a fairly simple principle that Mr Lowey outlined of improving legislation that leads to a lot of words, legal jargon, which sometimes cutting through the legal jargon is not always the simplest of processes.

So with those words I will conclude, Madam President.

**The President:** The mover to reply.

**Mr Lowey:** Thank you, Madam President.

Yes, I thank Members for the interest that they are showing. Absolutely right. I think most of the points have been actually answered. If you would excuse me for just one moment. Most of the points have been explained by other Members.

If I come to Mr Downie last, not out of any disrespect, but he is the one who has queried it most.

Mr Callister, really, has answered some of the points that have been made by Mr Downie, so I am not going to repeat them. The FSC eventually – it is not included in this particular Act – but the FSC will deal with the AML – in other words the banks and the moneylenders. They will deal with that eventually.

This Bill is at the request to strengthen the ability of the OFT to operate and as I said at last week's Treasury meeting, the law was interpreted that it did not apply. Since then, we have had legal opinion that it is all-inclusive and there are no options; therefore, we have to deal with that in the short term and that is why I said it was short term.

I brought in the FSC to illustrate that we are not dealing with this in isolation, but further down the road they will do, after consultation with the OFT and the Treasury and that is when legislation will come forward.

At this moment, it is the OFT that will be dealing with this particular Act and moving with Treasury concurrence, and as Mr Crowe has said, any regulation to abolish will have to have, eventually, Tynwald approval. So in fact we do have that safeguard that it is not *carte blanche*. It will be actually dealt with.

But we will exempt whole classes, as opposed to individuals, as they have to give now. So this week we could be dealing with a company and next week we could be dealing with a company, and therefore it could be dribs and drabs and all of the red tape that goes with that.

I wish I could share some of the background papers that I have, as I am sure Mr Downie knows only too well, being a former Member of the Treasury, of the consultations that have taken place already with people and

there is not just one draft, of course, of the Bill, there has been two or three drafts – each one fine sieving the consequences.

I think Mr Crowe actually used the correct... ‘unintended consequences’. We all thought the Bill only dealt with certain things; it did not. Therefore we are trying now to rectify that for the short to medium term and then we will come on to the long-term solution, but I think we must jump that fence when we get to it and not today.

So I would thank Hon. Members for their general support for the principle. The Bill, as I say, has only got three clauses and hopefully it covers all the points that have been identified up to date. I beg to move.

**The President:** The motion is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.