

4.2. Preferential Payments (Amendment) Bill 2016 – Second Reading approved

Mr Teare to move:

That the Preferential Payments (Amendment) Bill 2016 be read a second time.

The Speaker: Preferential Payments (Amendment) Bill. I call on the mover, the Hon. Member for Ayre, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

The Preferential Payments (Amendment) Bill 2016 will amend the Preferred Creditor Regime to place deposit amounts eligible for compensation under the Isle of Man Depositors' Compensation Scheme above all other preferred creditors except liquidator expenses and secured creditors. This will ensure that if in the future the Depositors' Compensation Scheme is triggered, then rapid payments can be made to depositors. The latest international standards regarding depositor compensation schemes require payments to depositors to be made within seven days from default of a bank.

This will also address recommendation 3R/2 of the report of the Select Committee of Tynwald on Kaupthing Singer & Friedlander (IOM) Ltd, which stated:

we recommend that Government consider all options to enhance the position of and speed of repayment to retail depositors in the review of the Depositors' Compensation Scheme.

The proposed Amendment Bill also enables Treasury, by order, subject to the approval of Tynwald, to vary or reduce the priority of debts, and also to recognise the depositor compensation scheme of another jurisdiction as a preferred creditor if the scheme is equivalent, analogous or similar to the Isle of Man's Depositors' Compensation Scheme.

Mr Speaker, I move that the Preferred Payments (Amendment) Bill 2016 now receive its Second Reading.

The Speaker: Hon. Member, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: Hon. Member for Onchan, Mr Karran.

Mr Karran: Can the mover inform this House ... It says that in the opinion of the Member moving the Bill its provisions are compatible with the meanings as far as the Human Rights Act 2001 is concerned. Why is it in the opinion of the mover? Why is it not in the opinion of the legal advice that drafts the Bill?

Mr Watterson: It is the same for all Bills.

Mr Karran: The second thing I would like to know is the issue as far as any other foreign recognised scheme which may, by order, be added to the paragraph (aa). Can he give us some more clarification as far as that issue is concerned?

Whilst I will not be opposing this Bill, I am concerned, especially with, in the past, where we had the situation of the hysteria when we had the KSF collapse and we were talking about having an unlimited liability on the taxpayer and not capping the Depositors' Compensation Scheme, which I am glad to see has been done now.

I really do think that the Minister needs to be addressing something that they tried to get the Bankers' Association to look at as far back as November 2013, about the funding of the future of a Depositors' Compensation Scheme.

My concern is I think we have to really address the core issue. Whilst this is tinkering on the edges, as far as this issue – and I know that the Minister is slightly stifled as far as the Vickers Report coming out – some of us made representation many years ago about the Depositors' Compensation Scheme, back in 1991, over the issue of developing a properly funded scheme. Those suggestions were ignored. I do feel that maybe those suggestions need to be resurrected by the Treasury to consider whether we need a proper fund ... that operatives in the Island actually start building up some sort of fund for the future.

One of the things I feel is that, whilst this might be, this way ... this Bill is really curving around the very edges of what we need to be addressing. In my opinion, this Bill would have been far better looking at the way forward on a basis of a scheme based on an insurance model, where each bank would be required to inform investors that the percentage of interest that they would be prepared to put towards the insurance costs of the overall Depositors' Compensation Scheme by a private insured package ... I really do think, Vainstyr Loayreyder, we were very fortunate as far as the Irish Republic was concerned, where they honoured the liabilities of the Irish banks, and they have come out of it.

I do feel that maybe the time has come that when we are talking about a Depositors' Compensation Scheme we need to be looking from a totally different outlook. In my opinion, the present arrangements are far too cosy arrangements that are involved at the present time.

I hope that the Shirveishagh will be thinking in the future of the long-term viability and ability as far as having a Depositors' Compensation Scheme, even allowing for ... at least we now see the limitations on the total open cheque basis that I believe it is. And the mover can tell us, but I think it is £150 million that is ring-fenced – or is it £¼ billion that is ring-fenced as far as the taxpayers' liability is concerned if we cannot get that compensation from other areas.

I believe that one of the ways that we are going about this wrong, in my opinion, is the fact that I think that we would be far better looking for some sort of insurance model that takes the costs away from the taxpayer, because I believe that that would be a way forward to try and see whether there is a private insurance company that would be involved as far as developing a Depositors' Compensation Scheme. I believe that that role would help the security as far as the Depositors' Compensation Scheme in the long term, because they would be taking on the liability of the payments for such a scheme – plus the fact that, by having them, there would be a situation where we would have some independent audit outside the FSC.

At the present time, we have a situation where we have this glaring possibility of a massive amount of liability for the Island that could put us into a fiscal hole. I would have liked to have seen, instead of looking from a preferential payments situation, looking from the issue of maybe getting an insurance company that provides this insurance cover for investors in the Isle of Man bank, and obviously the insurance risk would be different between a domestic bank and an investment bank. These are issues that the Liberal Vannin Party has raised in the past. The advantages would be it would actually help to secure the safety of deposits on the Island, because you would then have a three-way split as far as the compensation scheme would be concerned for the future. Obviously, you would have the bank, which has its responsibilities to its shareholders to make sure that it does not get into financial trouble; you would have the insurance company, which could withdraw its cover if it is dissatisfied with the banking process of an individual bank, which would add an extra regulatory thing where they feel that the bank is being more irresponsible than being good with depositors' money; and it would actually allow the FSC to become a more robust procedure due to the risk of financial responsibilities as far as Government is concerned and the potential bank failure is concerned, so that they could do their job much better.

I honestly feel that whilst this is a way of affecting a major fiscal liability for the future Houses of the House of Keys, I really do feel that we need to be looking at a much better way to do it.

Can the mover, when he does reply, actually tell us how far we have got with this Vickers Report? When are we going to see a dynamic policy on how we are going to do it as an international finance and banking sector for the world? How are we going to make sure that we limit the liabilities? I am not criticising the fact that we have gone from unlimited liability to restricted liability, but even allowing for that, that would have a major effect as far as the Island is concerned, and I just feel that maybe by voting for this I would not want to be supporting this on the basis that there are not other ways forward in order to secure the finance sector for people who put their hard-earned cash into Manx banks, but also that this is the only way as far as the tab being picked up by the taxpayer.

I would be interested in the mover's reply, because I believe that what we are doing, as far as this issue is concerned, is tinkering when we really need to have a fundamental well thought out strategy about this £¼ billion potential liability that could be inflicted on a future House and a future Government without the luxury of going through the biggest economic boom over the last 20 years.

The Speaker: Hon. Members, before I call the Minister to reply, just to assist the House, on the first point made by Mr Karran regarding the statement in the Bill about the opinion of the Member moving the Bill, as to whether its provisions are compatible with the Human Rights Convention, this is a statutory requirement of the Human Rights Act itself and is common to all legislation.

Mr Karran: Why not the Attorney General's department?

The Speaker: Because, sir, the law says that. The Human Rights Act is quite specific that it is the opinion of the Member which must be confirmed within the legislation.

Mr Watterson: Blame those who were here in 2001.

The Speaker: With that, I call the Hon. Member for Ayre, Mr Teare.

Mr Teare: Thank you, Mr Speaker, and I do appreciate your clarification on the HR compliance aspect.

The first point raised by the Hon. Member for Onchan, Mr Karran, was about comparable schemes. We need to have reciprocity with other jurisdictions – for example, where we have banking groups which operate across various countries. If we are not careful, deposits which are made in one country which were then transferred or upstreamed to another country would then fall within that country's DCS for bail-in purposes, and then our depositors, our scheme, would be disadvantaged. So, what we need to do is to have reciprocity so that we can, in effect, deal with groups as a group across the various jurisdictions.

He did ask a question about the Depositors' Compensation Scheme, which I would respectfully suggest is outside the purpose of this Bill that I am moving through this Hon. House, but I will deal with the issue.

I intend to bring to Tynwald shortly changes to the Depositors' Compensation Scheme, and I am sure there will be a full debate at that time.

We are also bringing forward proposals for a new banking model, and under the new banking model some banks may prefer to stand outside the Depositors' Compensation Scheme. So, in effect, what happens is *caveat emptor* – the depositor makes a risk assessment of the security of their own funds, rather than to rely on the Depositors' Compensation Scheme.

The Hon. Member also mentioned free funding a depositors' compensation scheme. It is a very good point, but we have to consider our competitive position. He did say that there could be a turn or a cut taken from the interest rate paid to depositors to fund an insurance model, but there are two aspects of that. The first is from the depositor's point of view, they will be getting less so they may be prepared to transfer their money elsewhere because they are just looking at the headline rate of interest.

The other thing, the second part: it is only as good as the insurer that underwrites the risk. Now if we could go back nearly eight years to the financial downturn, when one of the biggest insurance companies in the world, AIG – who were AAA rated at the time – had to be bailed out by the US government. They nearly went bust. If the US government had not stepped up to the plate, then they would have gone bust, as Lehman Brothers did at that time. It is not as straightforward as it might be, but it is certainly something that can be looked at.

This preferential payment legislation I am bringing forward will in fact help to reduce claims on the Depositors' Compensation Scheme and the taxpayer as well. It is a way of managing the liability.

The final point that the Hon. Member raised was about the Vickers' report. This has given us a considerable amount of work and we are working with the banking industry to determine the final structure of their bank groups and the banking industry on the Isle of Man. Hon. Members will be aware that the UK government has decided that deposits with branches of UK banks in the crown depositories in Jersey, Guernsey and ourselves would not be eligible for compensation from the UK scheme. The danger is that any deposits made with the Isle of Man or Jersey or Guernsey branches would then be up-streamed to the UK and be caught in their bail-in regulations. The other side of the coin is to standalone subsidiaries operating in the CDs would not be eligible for compensation under the UK scheme again.

These are issues that will require quite a lot of detailed work. As I said before, that will be brought back through two proposals. The first is the new banking model and the second part is a revision to the DCS in due course.

So with that, Mr Speaker, I beg to move that the Second Reading of this Bill now be taken.

The Speaker: Hon. Members, the motion: Preferential Payments (Amendment) Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.