



PAYMENT SERVICES BILL 2015

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr Teare, MHK. They do not form part of the Bill.

INTRODUCTION

The Payment Services Bill 2015 provides the enabling powers necessary to amend the Island's laws so far as is necessary for its banks to become participants in the Single Euro Payments Area ("SEPA"). SEPA is a mechanism designed to facilitate faster payments throughout the European Union and also those third countries, such as Switzerland, which become adherent jurisdictions. The Bill is intended to facilitate the making of an application for the Island to become an adherent jurisdiction in accordance with the "Criteria for Participation in the SEPA Schemes for communities of banks or financial institutions outside the European Economic Area" by the European Payments Council ("the EPC"). The key legislative changes made in clauses 4 and 5 will apply only to those institutions providing payment services under the SEPA Schemes and to payments made using those Schemes.

This Bill contains 8 clauses.

Clause 1— Short title

Clause 1 provides for the short title of the resulting Act.

Clause 2— Commencement

Clause 2 provides for the resulting Act (other than clauses 1 and 2) to come into operation on a day or days appointed by an order made by the Council of Ministers.

Clause 3— Interpretation

Clause 3 provides for the interpretation of certain terms used in the resulting Act. Among the terms so defined are "the Directives" and "the relevant competition provisions". The former term is defined as meaning the Electronic Money Directive (2009/110 EC published in OJEU No. L 267, 10th October 2009 at page 7) and the Payment Services Directive (2007/64/EC published in OJEU No. L 319, 5.12.2007 at p. 1). The "relevant competition provisions" means articles 101 and 102 of the Treaty on the Functioning of the European Union. All these provisions are required to be represented in the law of the Island before an application to the European Payments Council for it to become an adherent jurisdiction can succeed.

Clause 4 — Regulations to give effect to the Directives.

Clause 4 will empower the Financial Supervision Commission to make regulations to give effect to the Directives. It is envisaged that the first set of Regulations to be made under this power will closely resemble parts of the UK's Payment Services Regulations 2009 (SI 2009/209). Regulations to give effect to the Directives could have been made under section 2A of the European Communities (Isle of Man) Act 1973. However, as it is necessary to make new primary provision in relation to competition law to comply with one of the other admission criteria it seemed more appropriate to include bespoke provision in the Bill to cover the application of the Directives as well.

Clause 5 — Regulations to give effect to the relevant competition provisions

In addition to giving effect to the Directives, an applicant payment institution is required to demonstrate that provisions “functionally equivalent to EU competition law are effectively represented in its laws or in equally binding practice”. This requires bespoke provision. Competition law on the Island does not at present mirror that in the EU, so bespoke provision is necessary for the regulation of payment service providers. Rather than constrain future development by articulating all the rules in respect of competition in the Bill, *Clause 5* therefore contains a high-level regulation making power enabling the Isle of Man Office of Fair Trading to make regulations to provide for the application of the relevant competition provisions of the Treaty on the Functioning of the European Union. These Regulations will disapply parts of existing Manx competition law and apply the relevant Treaty provisions instead.

Clause 6 — Regulations

Clause 6 provides that regulations may make, in relation to SEPA applicants, SEPA providers and SEPA payments, any provision which might be made by an Act of Tynwald. It also requires a body which is contemplating making regulations under the Act to consult with persons likely to be affected by them.

Clause 7 — Amendment

Clause 7 provides an element of future-proofing and permits the Council of Ministers to amend the Act by order if there are changes to the EPC's payment systems or to EU regulation of payment services.

Clause 8 — Tynwald control

Clause 8 provides that regulations and orders under the Act must be approved by Tynwald before they come into operation.