



**Isle of Man**

*Ellan Vannin*

## **PAYMENT SERVICES BILL 2015**



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## PAYMENT SERVICES BILL 2015

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### Explanatory Memorandum

1. This Bill is promoted by Mr Teare on behalf of the Council of Ministers. The Bill provides for the making of regulations by the Financial Supervision Commission and the Isle of Man Office of Fair Trading to modify the law of the Island so far as may be necessary in connection with banks operating in the Island to become participants in the Single Euro Payment Area (“SEPA”).
2. SEPA is an area within which banks which are participants can secure value for their customers’ payment transactions earlier than apply under other payment schemes. It is administered by the European Payments Council (“the EPC”). In order for a bank to become a SEPA participant it must first be based in an adherent jurisdiction. For that to happen certain conditions precedent need to be met. These are set out in the EPC’s paper EPC061-14 entitled “Criteria for Participation in the SEPA Schemes for communities of banks or financial institutions outside the European Economic Area”. Among those criteria are requirements that an applicant show that (among other things) Titles III and IV of the Payment Services Directive 2007/64 (as amended) or provisions substantially equivalent to those Titles apply to an applicant (see the second bullet point in paragraph 3(b) of paper EPC 061-14), and that provisions functionally equivalent to EU competition law are effectively represented in the law of the country or territory from which it operates. At present the Island’s competition law does not mirror that of the European Union, but it needs to do so, to the extent that it concerns SEPA applicants, SEPA participants and SEPA payments, if the Island’s banks are to be SEPA applicants.
3. *Clause 1* provides the short title of the resulting Act.
4. *Clause 2* provides that the resulting Act’s provisions (other than clause 1 and this clause) commence on a day to be appointed by the Council of Ministers.
5. *Clause 3* defines certain terms used in the Bill.
6. *Clause 4* empowers the Financial Supervision Commission to make regulations applying the Payment Services Directive (i.e. Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market [OJEU No L 319, 5.12.2007, p. 1]) and the Electronic Money Directive (i.e. Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions [OJEU No. L 267, 10.10.2009, p. 7]).
7. *Clause 5* empowers the Isle of Man Office of Fair Trading to make regulations to give effect to Articles 101 and 102 of the Treaty on the Functioning of the European Union, so far as necessary in relation to competition —

- (a) between SEPA participants providing payment services in or from the Island; and
  - (b) between those participants and other SEPA participants; and only so far as those provisions relate to –
    - (i) payment services provided in or from the Island; or
    - (ii) payment services provided to persons in the Island.
8. *Clause 6* provides that regulations under the Act may make, in relation to SEPA applicants, SEPA participants and SEPA payments, any provision that might be made by an Act of Tynwald. It also provides that there must be consultation between the maker of the regulations (the FSC or the Office of Fair Trading as the case requires) and such persons as the maker considers appropriate. Normally this will be the payment service providers as they alone will normally be affected by the regulations.
9. *Clause 7* provides a mechanism by which the Council of Ministers can amend the Bill by order in the event of legal or technological change in relation to payment services.
10. *Clause 8* provides that regulations and orders under the resulting Act (other than an appointed day order) must be approved by Tynwald before coming into operation.
11. An impact assessment has been prepared in relation to the Bill. Other than expenditure in relation to the making of the application to the European Payments Council for the Island to become an adherent jurisdiction, it is not anticipated that the Bill will have any impact on Government income or expenditure.
12. 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.



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# Isle of Man

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## PAYMENT SERVICES BILL 2015

1  
2 **A BILL** to provide for the regulation of financial institutions which are, or  
3 propose to become, payment service providers for the purposes of the Single  
4 Euro Payments Area; and for connected purposes.

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**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:—

### 5 **1 Short title**

6 The short title of this Act is the Payment Services Act 2015.

### 7 **2 Commencement**

- 8 (1) This Act, other than section 1 and this section, comes into operation upon  
9 such day or days as the Council of Ministers may by order appoint.
- 10 (2) An order under subsection (1) may make such consequential, incidental,  
11 supplemental, transitional or transitory provision as may appear to the  
12 Council of Ministers to be necessary.

### 13 **3 Interpretation**

14 (1) In this Act—

15 “**the Commission**” means the Financial Supervision Commission;

16 “**the Council**” means the Council of the European Union;

17 “**the Directives**” means the Electronic Money Directive and the Payment  
18 Services Directive;

19 “**Electronic Money Directive**” means Directive 2009/110/EC of the European  
20 Parliament and of the Council of 16 September 2009 on the taking up,  
21 pursuit and prudential supervision of the business of electronic money  
22 institutions [OJEU No. L 267, 10.10.2009, p. 7];

1 “OFT” means the Isle of Man Office of Fair Trading;

2 “payment service” has the meaning given in article 4(3) of the Payment Services  
3 Directive;

4 “payment service provider” has the meaning given in article 4(9) of the  
5 Payment Services Directive;

6 “Payment Services Directive” means Directive 2007/64/EC of the European  
7 Parliament and of the Council of 13 November 2007 on payment services  
8 in the internal market [OJEU No L 319, 5.12.2007, p. 1];

9 “payment system” has the meaning given in article 4(6) of the Payment Services  
10 Directive;

11 “payment transaction” has the meaning given in article 4(5) of the Payment  
12 Services Directive;

13 “the relevant competition provisions” means the provisions of articles 101 and  
14 102 of the Treaty on the Functioning of the European Union;

15 “SEPA” means the Single Euro Payment Area administered by the European  
16 Payments Council in accordance with the Payment Services Directive;

17 “SEPA applicant” means a body corporate that —

- 18 (a) is not a SEPA participant; but  
19 (b) has made an application to the European Payments Council to  
20 become a SEPA participant;

21 “SEPA participant” means a body corporate that—

- 22 (a) is recognised by the European Payments Council as satisfying the  
23 eligibility criteria set out in section 5.4 of the SEPA Credit Transfer  
24 Scheme Rulebook; and  
25 (b) adheres to that Rulebook;

26 “SEPA payment transaction” means a payment transaction using the SEPA  
27 Credit Transfer Scheme or the SEPA Direct Debit Scheme.

28 (2) References in this Act (or regulations under it) to the relevant  
29 competition provisions or the Directives —

- 30 (a) are to be construed as references to those provisions or the  
31 Directives as amended from time to time; and  
32 (b) are to be taken to include any instrument of the European Union  
33 re-enacting the relevant competition provisions or either of the  
34 Directives (with or without amendments).

#### 35 4 Regulations to give effect to the Directives

36 The Commission may make regulations applying the Directives, with such  
37 additions, modifications or omissions as it thinks appropriate in relation to  
38 SEPA applicants, SEPA participants and SEPA payment transactions.

- 1 **5 Regulation of competition between SEPA participants**
- 2 (1) OFT may make regulations applying, as part of the law of the Island, the
- 3 relevant competition provisions.
- 4 (2) But such regulations may make provision only so far as is necessary to
- 5 secure compliance with the relevant competition provisions —
- 6 (a) between SEPA participants providing payment services in or from
- 7 the Island; and
- 8 (b) between those participants and other SEPA participants; and
- 9 only so far as those provisions relate to —
- 10 (i) payment services provided in or from the Island; or
- 11 (ii) payment services provided to persons in the Island;

- 12 **6 Regulations – supplemental**
- 13 (1) Regulations under this Act may make, in relation to SEPA applicants,
- 14 SEPA participants and SEPA payments, any provision which might be
- 15 made by an Act of Tynwald.
- 16 This is subject to section 5(2).
- 17 (2) Before making regulations under this Act, the Commission or OFT (as
- 18 the case requires) must consult such persons as appear to them to be
- 19 appropriate.

- 20 **7 Amendment**
- 21 (1) Subsection (2) applies if it appears to the Council of Ministers to be
- 22 necessary or expedient to amend this Act in consequence of —
- 23 (a) any development in the operation of payment systems regulated
- 24 by the European Payments Council; or
- 25 (b) any amendment of the law of the European Union relating to
- 26 payment services.
- 27 (2) If this subsection applies, the Council of Ministers may by order amend
- 28 this Act.
- 29 (3) An order under subsection (2) may contain such incidental,
- 30 supplemental or transitional provision as appears to the Council of
- 31 Ministers to be necessary or expedient.

- 32 **8 Tynwald control**
- 33 (1) Regulations and orders made under this Act do not have effect unless
- 34 they are approved by Tynwald.
- 35 (2) Subsection (1) does not apply to an order under section 2(1) (appointed
- 36 day).

IN THE KEYS

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**PAYMENT SERVICES BILL 2015**

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A **BILL** to provide for the regulation of financial institutions which are, or propose to become, payment service providers for the purposes of the Single Euro Payments Area; and for connected purposes.

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

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MR TEARE

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JANUARY 2015