



## **PREFERENTIAL PAYMENTS (AMENDMENT) BILL 2015**

### **EXPLANATORY NOTES**

These Notes have been produced for the assistance of Members  
with the approval of the Member in charge of the Bill,  
the Hon William Edward Teare MHK

#### **INTRODUCTION**

1. These explanatory notes relate to the Preferential Payments (Amendment) Bill 2015. They have been prepared by the Department of Economic Development and Department of Treasury in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Ipso facto, where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### **BACKGROUND**

3. The intention of the amendments is to ensure that timely payments are made to the Depositor Compensation Scheme ("DCS") for claims of compensation that it has settled and to depositors who, whilst eligible under the Scheme, have not made a claim for compensation by adding eligible protected deposits as paragraph (aa) at the head of the list of preferential creditors within section 3 (1) of the Preferential Payments Act 1908 ("the Act").
4. The amendments proposed by the Bill have been subject to public consultation which elicited a broad range of views, most of which were generally supportive of the

principle of the protection of the taxpayer and that of early payment to depositors. Whilst the overall number of responses was relatively few, given the nature of the proposed changes, they were felt to be representative of the sectors impacted.

5. 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.

## **FINANCIAL IMPLICATIONS**

6. There are no direct cost implications of the proposed amendments to the Government.
7. In cases where the Treasury has advanced money to the Depositor Compensation Scheme ("DCS"), then the DCS and so the Government will rank first in order of payments made to creditors which should mean that Government will receive reimbursement of the funds provided in a more timely fashion and the risk of financial loss is lessened
8. Under this amendment to the Bill, in the case of bank insolvencies only, all debts (including any debts owed to the Crown, rates due and payable within the previous 12 months, and National Insurance Contributions) will now rank behind any debts owed to the DCS, or any another foreign recognised scheme which may by order be added to paragraph (aa), and to depositors that qualify for compensation under the DCS but have not claimed it. This may lead to the lack of recoverability of monies owed where the assets of an insolvent bank are not sufficient to meet the debts to the preferred creditors.
9. An important matter to note is that, if passed, the Bill places the DCS and those eligible for compensation but have not claimed, ahead of any employee claims. However, the employee is able to claim the preferred sums owing by the insolvent bank from Government who, will in turn, stand as a preferred creditor in their place.

## **SUMMARY AND STRUCTURE OF THE BILL**

10. As described over page, the Bill consists of 4 clauses.

## **PART 1 – INTRODUCTORY**

### ***Clause 1***

11. This clause gives the Bill its short title.

### ***Clause 2***

12. Amends the Act. Clause 2 (2) seeks to insert a new category of preferred creditor based on those deposits that are eligible for compensation under the DCS Regulation 2010 and places them above all other preferred creditors in terms of priority of payment. This means that eligible depositors, or the DCS where it has paid compensation to them, will receive preferential treatment of payment up to the level of compensation provided for in the DCS.

13. Clause 2 (3): Inserts a new section 3A into the Act which would enable Treasury by order, subject to the approval of Tynwald, to amend paragraph (aa) of Section 3 (1) of the Act. It also provides Treasury with the power to recognise foreign depositor guarantee schemes where the foreign scheme is deemed as an equivalent, analogous or similar scheme.

### ***Clause 3***

14. This clause provides for the expiry of the resulting Act once all of its provisions are in operation. This will not affect the amendments made by the resulting Act.