

Order of the Day

1. Beneficial Ownership (Amendment) Bill 2020 – Second Reading approved

Mr Henderson to move:

That the Beneficial Ownership (Amendment) Bill 2020 be read a second time.

The President: We have quite a full Order Paper before us, so without further ado, Item 1, Beneficial Ownership (Amendment) Bill.

Mr Henderson, please.

15 **Mr Henderson:** Gura mie eu, Eaghtyrane.

I mentioned at First Reading that this Bill addresses some matters arising out of the Moneyval Report on an evaluation of the Island's fiscal and legal regime to combat money laundering and counter the financing of terrorism undertaken in 2016. It also further amends the Beneficial Ownership Act 2017 in respect of measures to secure the accuracy of the beneficial ownership register and the timeliness within which information is placed or updated on that register.

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I would like to thank Mrs Poole-Wilson for her comments about not-for-profit organisations and small charities that sometimes incorporate as companies.

Now, Eaghtyrane, I seem to have something which may be more akin to the Companies (Amendment) Bill there, but just by way of reasoning, we have addressed that and I will address that when we come on to the Companies (Amendment) Bill.

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With that, Eaghtyrane, I think I have made a fairly detailed explanation at First Reading, and therefore I believe I have covered the points raised and I beg to move that the Beneficial Ownership (Amendment) Bill be read for the second time.

30 **The President:** Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second and reserve my remarks.

35 **The President:** Hon. Members, I put the question that the Beneficial Ownership (Amendment) Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Beneficial Ownership (Amendment) Bill 2020 – Clauses considered

Mr Henderson to move.

The President: Moving on to the clauses, and clauses 1, 2 and 3 together I think.

40 **Mr Henderson:** Yes, please, Eaghtyrane, with your permission and that of Members, I wish to move clauses 1, 2 and 3.

Clauses 1 and 2 are introductory and deal with the Bill's short title and its commencement. The Bill comes into operation on such day or days as the Treasury may by order appoint.

Clause 3 introduces the amendments made by the Bill to the Beneficial Ownership Act 2017, which I will refer to throughout as 'the Act'.

45 Eaghtyrane, I beg to move that clauses 1, 2 and 3 stand part of the Bill.

The President: Lord Bishop.

The Lord Bishop: I beg to second.

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The President: I put the question that clauses 1, 2 and 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

55 **Mr Henderson:** Gura mie eu, Eaghtyrane.

Clause 4 makes grammatical changes to the definitions of 'Authority' and 'Department' and adds a new category to the definition of 'permitted purpose', which provides for the disclosure of statistical data to a Department or Statutory Board in section 3 of the Act.

60 When 'Department' is used throughout the Act it means the Department for Enterprise only. However, the change to 'permitted purpose' added by this Bill is to allow a Government Department or a Statutory Board to collect statistical data, and so refers to 'a Department' as a general term. Accordingly, the amendment to the definition of 'Department' in this clause is to clarify when a reference is to *the* Department for Enterprise and when it is to *a* Department, whether that Department is the Department for Enterprise or another Department, such as the
65 Cabinet Office, accessing the register for a 'permitted purpose' – in particular, in order to collect statistical data.

It is important that anonymised beneficial ownership statistical data can be provided to Departments other than the Department for Enterprise, for example, for the purposes of international reporting to such bodies as Moneyval.

70 Eaghtyrane, I beg to move that clause 4 stand part of the Bill.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

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The President: I put clause 4. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

80 **Mr Henderson:** Eaghtyrane, I wish to move clauses 5, 6 and 7 together and be voted upon together with your permission and that of Members, as they are all interlinked.

The President: Is that agreed?

85 **Members:** Agreed.

The President: Thank you.

Mr Henderson: Gura mie eu, Eaghtyrane.

90 These clauses deal with the period of time within which a notification of beneficial owner, or changes in the beneficial ownership details, are to be notified.

Clause 5 amends section 7, 'notice of appointment of nominated officer', of the Act, and the time period within which notice of the appointment of a nominated officer must be given to the

95 Department, from within one month to 'as soon as reasonably practicable but in any event within 21 days'.

For clarity, I should explain that every legal entity that is caught by the Act, that is a company, foundation or a limited partnership with legal personality, is required by the Act to appoint a nominated officer. The nominated officer can be a natural person who resides in the Isle of Man, or a corporate service provider licensed by the Isle of Man Financial Services Authority.

100 The role of the nominated officer is to hold in the Isle of Man all the beneficial ownership details of the legal entity. The nominated officer is further responsible for supplying to the beneficial ownership register the relevant details of any specific beneficial owner who owns more than 25% shareholding of the legal entity. If all the individual beneficial owners have 25% or below of the total shareholdings, the nominated officer must certify that fact to the beneficial ownership register.

105 The purpose of having a nominated officer is so there is a person or a corporate service provider in the Isle of Man who the authorities can physically go to for the purposes of administrating and enforcing the legislation. The same applies if the authorities are investigating the legal entity, and need to know the details of shareholders, irrespective of the percentage of shares held. Having a responsible physical presence in the Isle of Man is important, as we are an international finance centre, so a large proportion of the legal entities and their shareholders will not necessarily operate or be resident in the Isle of Man. The requirement to have a nominated officer who resides in the Isle of Man ensures that for the purposes of the Beneficial Ownership Act 2017 legal entities are accountable to the relevant authorities.

115 Clause 6 amends section 9, 'duty of legal owners', in the Act. It alters the requirement for a legal owner to supply required beneficial ownership information in certain circumstances to the nominated officer, from one month to 'as soon as reasonably practicable but in any event within 21 days'.

120 Again, for clarity, I would just like to explain that in the Act, and in this amending Bill, the term 'legal owner' is used and has a definition that goes beyond just those owners who are beneficial owners and own shares in a legal entity in their own right. It also encompasses people who may have control over shareholding voting rights through other means than actually owning the shares themselves. For example, shares may be owned by a minor, and a guardian or legal representative may exercise the voting rights that come with those shares until the minor comes of age and is legally responsible for their actions.

125 Clause 7 amends section 12, 'changes to required details', of the Act by substituting the period within which a legal owner must give notice to the nominated officer after learning, or having cause to suspect, a change in the required details, as defined in section 11 of the Act. The required details are changes such as a new address when a shareholder moves residence, or it could be a full change in beneficial ownership details, name, address and date of birth etc., when a shareholder sells his or her shares to another person. The amendment is made for consistency and to move away from the one month requirement to, 'as soon as reasonably practicable but in any event within 21 days of the date on which the changes were made'.

135 Eaghtyrane, I would just like to refer briefly to a matter raised by a Member during the debate on the Second Reading of the Companies (Amendment) Bill in the House of Keys. Mr Hooper noted that filing requirements in this Bill specify 21 days, whilst in the Companies (Amendment) Bill the requirement is for one month, which is in line with other company filing requirements. In this Bill the 21-day period anticipates changes currently under consideration within the Financial Action Task Force, or FATF, which, as I will just take a moment to remind Hon. Members, is the international body responsible for setting standards to tackle money laundering and terrorist financing.

140 The FATF was originally started to combat money laundering. It has been expanded to also target the financing for or of weapons of mass destruction, corruption, and terrorist financing. The Task Force was started in 1989 in Paris, by the then G7, where it is still called the Groupe d'action financière. Almost all developed countries support or are members of the FATF. FATF is

responsible for setting the international standards regarding anti-money laundering and countering the financing of terrorism. Major countries, or those that are of global strategic importance in economic and financial terms, are direct members of FATF. Smaller jurisdictions, such as the Isle of Man, are members of regional FATF bodies. Moneyval is the regional FATF body for Europe and that is the body which the Isle of Man is a member of.

FATF, as well as setting the international standards, ensures that jurisdictions apply those standards to their AML/CFT regimes by means of carrying out mutual evaluations and inspections. The FATF is expecting to agree in July what is considered to be a timely period for such filings; in other words, the number of days within which beneficial ownership information should be updated. The only countries which to date have received a positive evaluation for the filing of beneficial ownership information require this information to be updated within 21 days or less. The UK, for its part, requires filing within 14 days. Having consulted on the matter, and received the views of industry in the Island, we believe 21 days is appropriate and achievable for the industry, hence the reference to 21 days throughout this Bill.

In the Companies (Amendment) Bill the one-month filing period seeks to deliver a timelier update of information to the companies registry, harmonising the filing requirements in the Companies Act with those which are already in place in the Companies Act 1931, which is an Isle of Man requirement for that purpose.

Eaghtyrane, I would again just like to refer briefly to another matter raised by a Member in the House of Keys. It was asked why we are moving ahead and changing the timescales now, instead of waiting for what the decision is and then making sure our timescales align to whatever it is the FATF happen to decide in July. The answer is that the Isle of Man is due to report back to Moneyval this April on the progress it has made in correcting the last few outstanding deficiencies from its 2016 Mutual Evaluation Report. If the Report is successfully received, the Isle of Man may be considered for removal from Moneyval's enhanced reporting procedures and be placed into Moneyval's ordinary reporting procedures. This would be a very positive step for the Island, and one which will elevate the international standing of our AML/CFT regime and reduce the risk of the Isle of Man being considered for possible future international 'blacklisting'. Hence the desire, via this Bill, to show Moneyval we are addressing the issue now.

Officials attended recent FATF meetings when physical plenaries were held prior to the COVID pandemic. Consequently, it is known that a common consensus was arrived at by the voting members of FATF that any requirement for filing beyond 21 days for beneficial ownership details was regarded as failing the criteria of being timely and accurate.

Only jurisdictions meeting this 21-day filing requirement have been positively marked on the point in their mutual evaluation reports. This was a verbal consensus by members, repeatedly asserted, but not as yet placed into the formal written FATF requirements. As detailed earlier, questions of rewriting the requirements at this point, and stipulating an agreed time limit, are currently expected to be agreed during the July 2021 FATF plenary, which is after we are expected to make our report to Moneyval in April. By pre-empting the FATF and moving now to a 21-day requirement, we have a chance to positively influence Moneyval to upgrade our reporting status with them. If we have not anticipated correctly with the 21-days limit, that can be corrected in the autumn, when draft legislation is planned to be prepared to make the beneficial ownership register accessible by the public.

Eaghtyrane, I beg to move that clauses 5, 6 and 7 stand part of the Bill.

The President: Lord Bishop.

The Lord Bishop: Mr President, I beg to second.

The President: I put the question that clauses 5, 6 and 7 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

Mr Henderson: Gura mie eu, Eaghtyrane.

200 Clause 8 amends section 14, 'further consequences of failure to disclose beneficial ownership', of the Act by replacing a reference to '2 weeks' to one of 14 days in section 14(5). This is to ensure consistency of drafting style throughout the section, as the term 14 days is used previously at section 14(3).

205 For clarity, I would just say that section 14 in the Act is concerned with actions the nominated officer and legal owner must take when they believe a beneficial owner has not supplied their correct details, either mistakenly or deliberately. Time limits for certain actions are set at 14 days as a balance to ensure timely action, whilst recognising that the beneficial owner might reside abroad and not receive an instant notification or a request.

Eaghtyrane, I beg to move that clause 8 stand part of the Bill.

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The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

215 **The President:** I put clause 8. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Henderson: Gura mie eu, Eaghtyrane.

220 Clause 9 amends section 15, 'disclosure of beneficial ownership information by nominated officer', of the Act.

The requirement for the nominated officer to supply to a Government body when served with a notice information regarding non-registrable beneficial owners is reduced from one month to 21 days. This is consistent with changes to other time limits within the Act for supply of information to within 21 days that this Bill makes to that Act.

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Eaghtyrane, I beg to move that clause 9 stand part of the Bill.

The President: Lord Bishop.

230 **The Lord Bishop:** Thank you, Mr President. I beg to second.

The President: I put clause 9. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

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Mr Henderson: Gura mie eu, Eaghtyrane.

240 Clause 10 amends section 20 of the Act, where it is stated 'compulsory submission of registrable beneficial ownership information to the Department' of the Act. This is achieved inserting a new subsection (1A) stating the Department for Enterprise may make regulations in connection with the reasonable steps a nominated officer must take in order to comply with section 20(1) and the compulsory submission of registrable beneficial ownership information.

This allows for the Department for Enterprise to further expand upon what is considered to be 'taking of reasonable steps' without resorting to primary legislation. The regulations, for example, could include detail as to how the nominated officer is to take a risk-based approach when considering what are 'reasonable steps', and in what circumstances physical meetings with beneficial owners might be required. They certainly would reflect evolving best practice and any future international or court rulings on what constitutes 'reasonable steps' in this context.

250 The amendments to section 20 also require, where such regulations have been made, that the information to be provided includes a statement confirming that the regulations have been complied with.

255 The amendments also add an additional requirement when the nominated officer supplies information that an entity has no registrable beneficial owners to the Department for Enterprise. That is, there are no beneficial owners which hold more than 25% of the total shareholding of the company or entity concerned. It must be certified that, if any departmental regulations have been issued on taking 'reasonable steps' to ascertain that position, these regulations have been adhered to. It also requires the nominated officer to certify whether or not they have had to issue a notice to establish that position. This further ensures the data submitted to the register is accurate.

260 Lastly, clause 10 adds into subsection (7) that, with regard to the changes brought in by this Bill, required details are to be submitted to the Department for Enterprise by time limits which will meet emerging international standards regarding timeliness, as soon as reasonably practicable, but in any event within 21 days.

265 Eaghtryane, I would again just like to refer briefly to another matter raised by a Member in the Keys when the Bill was debated there. Mr Hooper wanted to check whether the Tynwald process for approving these regulations was being changed by anything in the Bill, or was the Bill merely clarifying the existing Tynwald procedure in place. I can confirm that the Tynwald procedures remain totally unchanged and any references here are only for clarification purposes and ease of understanding.

270 Eaghtryane, I beg to move that clause 10 stand part of the Bill.

The President: Lord Bishop.

The Lord Bishop: I beg to second, Mr President.

275 **The President:** I put clause 10. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Henderson: Gura mie eu, Eaghtryane.

280 Clause 11 amends section 21, 'voluntary submission of non-registrable beneficial ownership information', of the Act by inserting a power under which the Department for Enterprise may make regulations regarding the voluntary submission of non-registrable information by a nominated officer and where such regulations are made, a requirement to comply with them is imposed on a nominated officer. It gives the Department for Enterprise the power to issue regulations on the information relating to non-registrable beneficial owners. As explained
285 previously, non-registrable beneficial ownership information is that which relates to a beneficial owner who owns 25% or below of the legal entity.

The nominated officer is only required to provide information regarding beneficial owners who own more than 25% of the entity's shareholding to the beneficial ownership register. However, some entities prefer that their full beneficial ownership details are recorded upon the register to assist third parties they may be doing business with, to carry out their 'know your customer'
290 requirements, or to show they have nothing to hide and are happy for their details to be accessed via the register, so adding legitimacy to their company. It is thought likely that more non-registrable beneficial owners might opt for actual registration when the beneficial ownership register is made accessible to the public.

295 The clause also adds in requirements that if a voluntary submission is made, it is accompanied by the same information as is stipulated for registrable beneficial ownership. This is necessary as third parties might use the voluntary information for verification purposes, so it is important it is

maintained to the same standards as compulsorily required information. If it were not, the accuracy, value and reputation of the register as a whole may be affected.

300 Eaghtryrane, I beg to move that clause 11 stand part of the Bill.

The President: Lord Bishop.

305 **The Lord Bishop:** Mr President, I beg to second.

The President: I put clause 11. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

310 **Mr Henderson:** Gura mie eu, Eaghtryrane.

Clause 12 amends section 25, 'Department not liable for accuracy of information submitted', of the Act by renumbering the existing text as subsection (1) and inserting additional subsections. The new subsections give the Department powers to make enquiries to establish the accuracy of the information submitted to the Database and, where it considers such information is false, 315 inaccurate or misleading, it may remove, correct or annotate the information. However, if these powers are used, the Department must give notice of such to the nominated officer of the relevant legal entity – a legal entity being a company, limited partnership with legal personality or a foundation which the Act applies.

It also provides that the Department may make regulations to give effect to the 320 aforementioned powers to make enquiries. These additional powers are necessary for the Isle of Man to meet the international requirements to identify and verify that the information on its Database is timely and accurate.

Eaghtryrane, I beg to move clause 12 stand part of the Bill.

The President: Lord Bishop.

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The Lord Bishop: Thank you, Mr President. I beg to second.

The President: I put clause 12. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

330 Clause 13.

Mr Henderson: Gura mie eu, Eaghtryrane.

Clause 13 inserts a new section 26A, 'requirement to notify errors in the Database', into the Beneficial Ownership Act 2017 by which a person specified in section 26(2)(d) or (e) of the Act 335 who accesses the Database must notify the Department for Enterprise within one week if that person knows or suspects that any entry on the Database is materially incorrect. Failure to do so, without reasonable excuse, is an offence punishable by a maximum fine of Level 5 on the standard scale.

I will clarify what is meant by 'a person' here, because at the moment there is restricted access 340 to the register. An entity can elect to give access to a third party to access the entity's details in the beneficial ownership register. They may do so to allow a bank, for instance, to do verification checks on the entity whilst doing business with them. Also, nominated officers can be Isle of Man corporate service providers, so a number of their staff might have access to the entity's beneficial details on the beneficial ownership register. Any or all of whom might spot that materially 345 incorrect information has been entered on the register. This mirrors requirements that have already been put in place by the UK and it is to help ensure the accuracy of the information on the Database.

Eaghtryrane, I beg to move that clause 13 stand part of the Bill.

350 **The President:** Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

355 **The President:** I put clause 13. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

360 **Mr Henderson:** Eaghtyrane, clause 14 makes grammatical amendments to section 32, the 'regulations', of the Beneficial Ownership Act. Any references to Department and authority in this section are amended to read 'the Department' and 'the authority' to fit with the revised definition, as I explained when moving clause 4 in relation to the definitions of the Department for Enterprise and other Government authorities.

Eaghtyrane, I beg to move that clause 14 stand part of the Bill.

365 **The President:** Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

370 **The President:** I put clause 14. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Henderson: Gura mie eu, Eaghtyrane.

375 Clause 15 amends section 42, 'statement of compliance in annual returns', of the Act so as to require a legal entity, and its nominated officer, to submit separate statements of compliance by the date on which the annual return is due to be filed, but not with the annual return. This replaces the requirement that a statement of compliance signed jointly by the legal entity and its nominated officer is submitted with the annual return.

380 The amendments to section 42 more clearly separate the respective responsibilities of the legal entity and the nominated officer in relation to the statements of compliance. This amendment is required as a consequence of the intended move to a fully digitalised registry, and the problems such a system would have in receiving documents which require dual certification. In such digitalised systems, one person normally goes online and can certify a document and then it is automatically submitted. Unless the second certifier was seated with them, dual certification could not take place. Having separate certification means that the legal entity and the nominated officer do not have to physically meet every time in the same place when such documents are required to be filed.

Eaghtyrane, I beg to move that clause 15 stand part of the Bill.

390 **The President:** Lord Bishop.

The Lord Bishop: Mr President, I beg to second.

395 **The President:** I put clause 15. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

Mr Henderson: Gura mie eu, Eaghtyrane.

400 Clause 16 makes a number of amendments to paragraph (8) of Schedule 1 to the Act entitled 'civil penalties', including the addition of a Tynwald procedure in relation to regulations made

under subparagraph (6) of that paragraph, regarding civil penalties. The Act allows for the making of regulations relating to civil penalties and the Bill adds that if such regulations are made they can only come into operation after Tynwald has approved these regulations.

405 It also amends the offence, which may be subject to a civil penalty, of furnishing information that is false, inaccurate or misleading, to stipulating that the furnishing must have been knowingly or recklessly carried out. This alteration to the offence was requested by industry at the consultation stage of the draft Bill. They were concerned that as written in the Act the offence could apply when genuine mistakes were made, such as a clerical error in transposing information by corporate service provider staff. The new wording is meant to ensure only fraudulent or
410 extremely cavalier actions are caught by the offence. The other amendments are minor ones for drafting purposes to ensure accuracy of reference.

Eaghtyrane, I beg to move clause 16 stand part of the Bill.

415 **The President:** Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

The President: I put clause 16. Those in favour, say aye; against, no. The ayes have it. The ayes
420 have it.

Clause 17.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 17 makes consequential amendments to a number of enactments as a result of the amendment to section 42 of the Act, in relation to the separation of the respective responsibilities
425 of the legal entity and the nominated officer concerning the statements of compliance.

Eaghtyrane, I beg to move that clause 17 stand part of the Bill.

The President: Lord Bishop.

430 **The Lord Bishop:** Thank you, Mr President. I beg to second.

The President: I put clause 17. Those in favour, say aye; against, no. The ayes have it. The ayes
have it.

That concludes the clauses stage of that particular Bill.