



## **ANTI-MONEY LAUNDERING AND OTHER FINANCIAL CRIME (MISCELLANEOUS AMENDMENTS) BILL 2018**

### **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Clare Bettison, MHK.*

#### **INTRODUCTION**

1. These explanatory notes relate to the Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Bill 2018. They have been prepared by the Department of Home Affairs 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.

#### **SUMMARY AND BACKGROUND**

3. The Bill addresses several recommendations made within the MONEYVAL Mutual Evaluation Report of the IoM. It also deals with a number of other matters which have been identified by various authorities in relation to anti-money laundering and the effective prosecution of financial crime.
4. Part 2 of the Bill amends the powers to make anti-money laundering and countering the financing of terrorism and proliferation codes to extend provisions to include non-regulated trustees and trustees who are not resident in the Island.
5. Part 3 of the Bill makes explicit the power to prosecute predicate cases domestically where parts of the offence/s were committed abroad. The measures, whilst not identified by MONEYVAL in its Report\*, will support the pursuit of foreign predicate offending and remove potential obstacles to prosecution where not all aspects of an offence take place in the Island. Apart from making the law clearer for professionals involved in combatting unlawful activity, this Part of the Bill represents further development of the principle that no person should be able to escape the legal consequences of unlawful activity, no matter where the unlawful acts or omissions took place or the extent to which the act or omission occurred partly in one place and partly in another place.
6. Parts 4 and 5 of the Bill clarify penalties for failure to comply with certain requirements and amend the Gambling (Amendment) Act 2006 in relation to appeals.
7. Part 6 of the Bill deals with record keeping in respect of legal entities known as foundations. The Financial Action Task Force (FATF) standards require that all "basic information" on a company should be recorded in a "Central Registry". Basic information includes the legal ownership and the control structure including basic regulating powers. A foundation's rules include details of its regulating powers and for FATF purposes a foundation is treated in the same way as a company i.e. as a "legal person". Under FATF methodology criterion 24.3 it is stated that this information

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\*<http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mutual-Evalutaion-Isle-of-Man.pdf>

should be publically available for companies. The interpretative notes which accompany FATF Recommendation 24 at section 16 also state that similar requirements should be imposed on foundations. MONEYVAL has recommended that foundation rules should be filed with the "Central Registry".

8. Part 7 of the Bill concerns the accuracy of information supplied to the Department for Enterprise or the Registrar, as the case may be.
9. Part 8 of the Bill clarifies the legal provision in relation to the Financial Supervision Authority's responsibility to investigate potential liabilities arising from a breach of AML/CFT requirements.
10. Should the Bill be passed by the branches, and receive Royal Assent, it is proposed all its provisions would be brought in by appointed day order.

#### **11. EUROPEAN CONVENTION ON HUMAN RIGHTS**

Section 16 of the Human Rights Act 2001 requires the Member moving the Bill to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). In the opinion of the Member moving the Bill, the provisions of the Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Bill 2018 are compatible with the Convention rights.

#### **12. FINANCIAL EFFECTS OF THE BILL**

In the view of the mover of the Bill, it is not expected to increase or decrease revenue or have any financial or personnel implications.

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### **NOTES ON CLAUSES**

#### **PART 1 – INTRODUCTORY**

13. **Clauses 1 and 2** provide that the short title of the Act will be the Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Act 2018 and that the Act may be brought in by appointed day order. In the event the Bill is passed by both branches, the intention would be to bring the entire Act into operation soon after the announcement of Royal Assent to the Bill in Tynwald.
14. **Clauses 3 and 4** extend the Department's power to make a code relating to combatting money laundering and the financing of proliferation and terrorism so that requirements relating to systems, procedures, record-keeping, controls and training may be applied to a trustee who is resident in the Island but who is not carrying on business in the regulated sector and to trustees who are not resident in the Island but are nevertheless trustees of a trust governed by the law of the Island.
15. **Clause 5** introduces a new Part 2A to the Criminal Justice Act 1991, which inserts eight new provisions intended to remove any question or doubt as to the legal powers under which a person may be prosecuted for certain offences committed or attempted off Island, where any part of, or relating to, the offence took place in the Island. New Part 2A is modelled on similar provisions in Part 1 of the Criminal Justice Act 1993 (of Parliament).

New section 26ZA specifies the offences and divides them into substantive offences (Group A) and conspiracy, attempt or incitement to commit such offences and the offence of conspiracy to defraud (Group B).

New section 26ZB speaks of "relevant events" and it is clear that where a particular event took place is to be disregarded. All that is required is for at least one relevant event to have taken place in the Island. Subsection (1) defines a "relevant event" (in

the case of a Group A offence) as any act or omission or other event the proof of which is required for conviction.

New section 26ZC sets out the matters that are immaterial to the question of guilt. A person may be guilty of a Group A or a Group B offence whether or not they are a British Citizen or are in the Island at the material time. Subsections (2) and (3) deal with conspiracy or attempting to commit a Group A offence or conspiracy to defraud. Subsections (4), (5) and (6) deal with exclusions.

New section 26ZD provides rules relating to the obtaining of property in the Island and the communication in the Island of any information, instruction, request, demand etc.

New section 26ZE deals with attempts to commit an offence.

New section 26ZF deals with conspiracy and incitement. Subsection (1) of section 26ZF sets out the three circumstances by which a person may be guilty of conspiracy to defraud whilst subsection (2) sets out two elements relevant to whether a person may be guilty of the offence of incitement to commit a Group A offence. These are, as subsection (3) says, subject to new section 26ZG.

New section 26ZG deals with the question of the relevance of law outside the Island. In respect of conspiracy to defraud (set out in new section 26ZF(1)), a person is guilty only if the agreed course of conduct would at some point involve an act or omission by one or more of the parties; or the happening of some other event which constituted an offence under the law in force where the act, omission or other event was intended to take place. In relation to attempt or incitement (set out in sections 26ZE and 26ZF(2)), the offence is only made out if what the person intended ("had in view") would involve the commission of an offence under the law in force in the jurisdiction where all or part of the offence was intended to take place. Subsection (3) provides that conduct that is an offence under the law of a particular jurisdiction is an offence for the purposes of the section regardless of how it is described in that law. The remaining subsections set out procedural matters.

New section 26ZH ensures new Part 2A does not have retrospective effect and makes a minor repeal to section 21 of the Criminal Justice Act 1991.

- 16. Clause 6** repeals sections 13 (conspiracy to commit fraud outside the Island) and 15 (offences committed outside the Island) of the Fraud Act 2017, as a result of the inclusion of the wider Part 2A provisions provided for in clause 5.
- 17. Clauses 7 to 9** (Part 4 of the Bill) amend the penalties for offences of failing to disclose information in paragraph 1(6) of Schedule 6 to the Anti-Terrorism and Crime Act 2003, section 20(5) of the Financial Intelligence Unit Act 2016 and sections 163A and 176 of the Proceeds of Crime Act 2008, to bring the penalties in line with section 41(1) of the Financial Services Act 2008. Following the implementation of section 55 of the Interpretation Act 2015 fines imposed by the summary court are expressed as a level on the standard scale. In accordance with the Interpretation Act fines that were expressed as not exceeding £5,000 are now expressed as not exceeding level 5 on the standard scale (i.e. £10,000).
- 18. Clause 10** amends the Gambling (Amendment) Act 2006 so as to alter a cross-reference within section 8(1) of that Act which relates to matters which may be stayed pending appeal and, in Schedule 4, to make the decisions of the Gambling Supervision Commissioners under the provisions of the Gambling (Anti-Money Laundering and the Countering the Financing of Terrorism) Act 2017 subject to appeal.
- 19. Clause 11** amends the Foundations Act 2011 to require a copy of the foundation rules to be provided to the Registrar (from which any information by which a person could be identified has been redacted). This also requires the Registrar to make a copy of those rules available for public inspection. Section 41 of the Foundations Act 2011 is

amended in relation to the documents to be kept at the foundation and section 45 is amended to include foundation rules.

- 20. Clauses 12 to 16** (Part 7) amend the Partnership Act 1909, the Companies Act 1931, the Limited Liability Companies Act 1996, the Companies Act 2006 and the Foundations Act 2011, by inserting into each of those Acts provisions clarifying that the Registrar (or Department, as the case may be) is not liable for the accuracy of the information submitted for inclusion on any register or index or for registration under those Acts. Nevertheless, the Registrar (or Department, as the case may be) is empowered to make such enquiries as are considered appropriate to establish the accuracy of any such information.
- 21. Clauses 17 and 18** (Part 8) clarify the powers of the Financial Services Authority (FSA) in respect of investigations into any potential liability arising from breaches of AML/CFT legislation by any person overseen by the FSA for AML/CFT purposes. Clause 17 inserts after "regulated activities" in the second paragraph of Schedule 1 to the Financial Services Act 2008 reference to regulated insurance activities and regulated pensions activities (which were formerly undertaken before merger by the Insurance and Pensions Authority). Clause 18 inserts provision into the sixth paragraph of Schedule 5 to the Insurance Act 2008 so the FSA's powers under that Schedule may be exercised for the purposes of an investigation referred to in clause 17.