



BRIBERY BILL 2012

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon Juan Watterson BA (Hons) ACA, MHK.

INTRODUCTION

1. These explanatory notes relate to the Bribery Bill 2012. 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 aim of the Bribery Bill 2012 is to ensure the Island's legislation to combat bribery meets developing international standards.
4. The Bill makes new provision in respect of bribery offences as a replacement to the Corruption Act 2008, and is closely based on the Bribery Act 2010 (of Parliament).
5. The principal difference between the proposed Bill and existing legislation is the introduction of an offence under which a relevant commercial organisation may be prosecuted for failing to prevent bribery if a person associated with that organisation commits a bribery offence (anywhere in the world) for the benefit of the organisation. However, a commercial organisation will have a defence if it has adequate procedures in place to prevent such conduct taking place.
6. Following a six week consultation period the Department considered 16 responses. There was no opposition to the Bill. The OECD, in its response, welcomed the Island's initiative in bringing forward this legislation and the Department had regard to its views, and those of other respondents to the consultation process, when deciding to make the changes noted in paragraph 7 below.
7. The Bill differs from the Bribery Act 2010 (of Parliament) in some respects because it retains three provisions from the Corruption Act 2008 (which it repeals and replaces) relating to the duty on public officials to report bribery. It also sets the time limit for bribery prosecutions to 21 years from the date of the alleged offence.
8. The Bill is split into 5 parts comprising 26 clauses and 2 Schedules. The first Schedule makes minor consequential amendments as a result of the provisions proposed in the Bill, while the second Schedule repeals legislation superseded by this Bill.
9. The main body of the Bill is structured as follows –
 - a. **Part 1 – Introductory provisions**, sets out the title, commencement and interpretation of the provisions;

- b. **Part 2 – Bribery offences**, provides for general offences relating to bribery and requires the Department to produce guidance to commercial organisations on preventing bribery;
- c. **Part 3 – Reporting bribery**, contains provisions, previously in the Corruption Act 2008, with regard to reporting bribery or attempted bribery, particularly with regard to public officials;
- d. **Part 4 – Penalties and other provisions about offences**, is about penalties for offences specified in the Bill and other related matters; and
- e. **Part 5 – Supplementary and final provisions**, contains provisions regarding the application of the resulting Act to individuals in public service of the Crown along with consequential amendments to other legislation.

EUROPEAN CONVENTION ON HUMAN RIGHTS (hereafter referred to as the “Convention”)

- 10. 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 Bribery Bill 2012 are compatible with the Convention rights.

FINANCIAL EFFECTS OF THE BILL

- 11. In the view of the mover of the Bill, it is not expected to have any human or financial resource implications.

NOTES ON CLAUSES

Part 1 – Introductory provisions

- 12. **Clause 1** gives the short title of the Act and **Clause 2** provides for the substantive Act to come into operation by Appointed Day Order. Sections or parts of the Act may be brought into operation at the same time, or on different days. It is intended the Act will be brought into operation once guidance, referred to in clause 12, has been prepared, consulted upon and is ready to be issued. This process is expected to be completed within 6 months of Royal Assent being announced to Tynwald.
- 13. **Clause 3** contains the general interpretation provisions.
- 14. **Clause 4** defines the meaning of the term “relevant function or activity” for the purposes of offences under this legislation. The term includes functions of a public nature, business activity, activity in connection with employment and any activity performed by or on behalf of a body of persons.
- 15. **Clause 5** defines the meaning of the term “improper performance” in relation to the term “relevant function or activity”. In summary, this means performance which amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust.
- 16. **Clause 6** defines the meaning of the term “expectation” as it relates to clauses 4 and 5 of the Bill.

Part 2 – Bribery offences

- 17. **Clause 7** makes it a general offence to give another person a reward so as to induce that other person to perform improperly a relevant function or activity.

- 18. Clause 8** makes it a general offence to request, agree to receive or accept a reward as an inducement to improperly perform an activity, whether for the benefit of the person giving the reward or for a third party.
- 19. Clause 9** makes it an offence to bribe a foreign public official with the intention of influencing that official in the performance of his or her official functions.
- 20. Clause 10** makes it an offence for a “relevant commercial organisation” to fail to prevent persons associated with that organisation from committing bribery offences. It would be a defence for the organisation to show it had adequate procedures in place to prevent persons associated with it from undertaking such activities.
- For the purposes of this clause a “relevant commercial organisation” is a body corporate (or partnership) on the Island and conducting business on the Island or elsewhere. It may also be a body corporate (or partnership) that carries on business, or part of a business, on the Island although not necessarily incorporated or established on the Island.
- 21. Clause 11** defines the meaning of “associated” person with regard to relevant commercial organisations. This provides for an “associated” person to be, for example, an employee, agent or subsidiary of the organisation.
- 22. Clause 12** requires the Department to produce guidance that “relevant commercial organisations”, referred to in clause 10, can put in place. In the event that the Bill passes through the branches, and Royal Assent is announced to Tynwald, the Department intends to prepare guidance material and consult with relevant representative parties. Once the material is ready the Act would be brought in by appointed day order and the guidance issued forthwith.

Part 3 – Reporting bribery

- 23. Clause 13** requires public officials on the Island to report, in the prescribed manner, attempts made to bribe them to either a constable or, if procedures have been established, to their employer.
- 24. Clause 14** makes it an offence for a public official to fail to report bribery as required under clause 13.
- 25. Clause 15** makes it an offence to take action harmful to any person on the ground the person has made a disclosure further to clause 13.

The provisions in Part 3 are currently sections 5, 6 and 7 in the Corruption Act 2008, which this Bill repeals in its entirety. The Department inserted these provisions in this Bill despite the consequence of differing from the Bribery Act 2010 (of Parliament) because they emphasise the additional duty on public officials to report bribery.

Part 4 – Penalties and other provisions about offences

- 26. Clause 16** provides for prosecutions offences under this Act to only be brought with the consent of the Attorney General.
- 27. Clause 17** provides that a person found guilty of an offence under clauses 7, 8 or 9 is liable; upon summary conviction to a term in custody not exceeding 12 months, a fine not exceeding £10,000, or both; and, upon conviction on information to custody not exceeding 10 years, a fine, or both. The maximum figure on summary conviction is set at £10,000 which, though different from England and Wales, is the same figure as applies in Scotland, and is intended to communicate that it is a very serious matter to be engaged in, through action or inaction, bribery.

It also provides that a person found guilty of an offence under clause 10 is, upon conviction on information, liable to a fine.

Finally, a person found guilty of offences under clauses 14 and 15 is liable, upon summary conviction, to a term not exceeding 6 months, or a fine not exceeding £5,000, or both; and, upon conviction on information, to custody for a term not exceeding 2 years, or a fine, or both.

28. **Clause 18** provides that an offence under this Act may be prosecuted in the Island irrespective of where the offence took place.
29. **Clause 19** provides a defence for persons either exercising any functions of an intelligence service, or as part of active service with the armed forces.
30. **Clause 20** allows a body corporate to be found guilty of an offence under this legislation (other than an offence under clause 10) if the offence was committed with the consent or connivance, or is attributable to the neglect, of an officer of the body corporate. The officer as well as the body corporate is liable to the penalty provided for the offence.
31. **Clause 21** provides for an offence under clause 10 to apply to a partnership.
32. **Clause 22** requires proceedings for an offence under this legislation to be instituted within 21 years of the alleged commission of the offence.

Part 5 – Supplementary and final provisions

33. **Clause 23** makes it clear this legislation applies to individuals in the public service of the Crown (e.g. civil servants) as it applies to other individuals.
34. **Clause 24** provides transitional proceedings with regard to any actions which may have been commenced under the Corruption Act 2008 prior to this legislation coming into operation.
35. **Clause 25** provides for Schedule 1 to make consequential amendments to legislation and also allows for Schedule 2 to repeal legislation which is no longer required (e.g. the Corruption Act 2008) as a result of this Bill coming into effect.

Sub-sections (3) and (4) also allow the Department, via an order approved by Tynwald, to make such supplementary, incidental, transitional or consequential provision as it considers appropriate for the purpose of this legislation, or as a consequence of this legislation.
36. **Clause 26** provides for this clause; clause 25(1) and (2); and Schedules 1 and 2, to expire once the last of these provisions have been brought into operation.

Schedules

37. **Schedule 1** makes consequential amendments to the Income Tax Act 1970; the Limitation Act 1984; the Criminal Justice Act 1990; the Police Act 1993; the Criminal Justice Act 2001; the Employment Act 2006; and the Proceeds of Crime Act 2008, as a result of this legislation.
38. **Schedule 2** repeals parts of the Criminal Code 1872; the Income Tax Act 1970; the Customs and Excise Management Act 1986; the Criminal Justice Act 1990; and the Anti-Terrorism and Crime Act 2003, as a result of provisions included in this Bill. It also repeals, in its entirety, the Corruption Act 2008.