



FRAUD BILL 2017

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 Fraud Bill 2017. 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. Should the Bill be passed by the branches, and receive Royal Assent, it is proposed all its provisions would be brought in together by appointed day order.
4. The law enforcement agencies of the Island currently tackle allegations amounting to fraud by drawing largely on provisions contained within the Theft Act 1981.
5. The Standing Committee of Tynwald on Public Accounts' (PAC) "Report on the handling by the Manx authorities of the case of Dr Dirk Hoehmann"¹ found that if the Manx statute book had been updated along the lines of the Fraud Act 2006 (of Parliament) the necessary ingredients of criminal fraud would have been easier to prove than prosecution under section 15 (Obtaining pecuniary advantage by deception) of the Theft Act 1981.
6. In accepting the recommendation of the PAC that legislation based on the UK Fraud Act 2006 should be enacted as soon as a suitable opportunity arose it was also identified that such legislation would be important in terms of compliance with international standards such as those provided by the Financial Action Task Force and other international bodies.
7. The Department also considered that fraud law in the Island should be based on the UK Fraud Act 2006 because the UK Act addresses the matter in a clear and concise manner and it will be good for those undertaking business in both the Island and the UK because the law, for all practical purposes, is the same.

8. 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 Fraud Bill 2017 are compatible with the Convention rights.

¹PP No 0097/13 (Report on the Order Paper for the sitting of Tynwald on 18th June 2013).

9. 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.

NOTES ON CLAUSES

PART 1 – INTRODUCTORY

10. **Clauses 1 and 2** provide that the short title of the Act will be the Fraud Act 2017 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.
11. **Clause 3** creates the offence of fraud and states that a person is guilty of fraud if he or she commits any of the offences set out in sections 4, 5 and 6. Subsection (3) provides that a person guilty of such fraud is liable on conviction on information to custody for a term not exceeding 12 years or a fine or both custody and a fine. On summary conviction a person may be liable to custody not exceeding 2 years, a fine not exceeding £20,000 or to both custody and a fine.
12. **Clause 4** sets out how fraud may be committed by false representation. A representation is false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading. In making the false representation the person must be dishonest and intend to either make a gain for him or herself or another person or intends that another person suffers loss or is exposed to the risk of loss. The offence is also committed if submitted in any form to any electronic device.
13. **Clause 5** shows that fraud can be committed by a person who dishonestly fails to disclose information to another person which the person is under a legal duty to disclose with the intention of gain or loss as indicated in clause 4.
14. **Clause 6** sets out how fraud may be committed by a person who occupies a position in which the person is expected to safeguard, or at least not act against, the financial interests of another person. A person may abuse their position by conduct that consists of omitting to act. For the offence to be made out a person must have dishonestly abused his or her position with the intention of gain or loss as indicated in clause 4.
15. **Clause 7** gives greater definition to the references to gain and loss in clauses 4, 5 and 6. Subsection (2) defines "gain" in terms of gain in money or other property whether temporary or permanent. "Gain" includes keeping what one has as well as getting what one does not have. Conversely, "loss" includes not getting what one might get as well as parting with what one has.
16. **Clause 8** makes a person guilty of an offence if the person has in his or her possession or under his or her control any article for use in connection with fraud. Upon conviction on information for an offence a person is liable to a term of custody of up to 6 years or a fine or both, or up to 12 months custody or a fine of up to £10,000 or to both on summary conviction.
17. **Clause 9** sets out the offence and penalties for making, adapting, supplying or offering to supply any article knowing or intending that it will be used in connection with fraud. The penalty on conviction on information is a term of custody not exceeding 12 years or a fine or both or, on summary conviction, a term of custody or a fine not exceeding 2 years or £20,000 or both on summary conviction.

- 18. Clause 10** clarifies that references to articles in clauses 8 and 9 includes any program or data held in electronic form. For the purposes of section 1(7)(b) of the Police Powers and Procedures Act 1998 (powers of a constable to stop and search persons, vehicles etc.) an article includes an article for use in connection with fraud.
- 19. Clause 11** makes it an offence to knowingly be a party to the carrying on of a business with the intention of defrauding creditors or for any other fraudulent purpose. "Fraudulent purpose" has the same meaning as in section 259 of the Companies Act 1931. A person convicted on information is liable to a term of custody not exceeding 10 years or to a fine or to both. If convicted summarily a person is liable to a term of custody not exceeding 12 months or to a fine not exceeding £10,000 or to both.
- 20. Clause 12** makes it an offence to obtain services dishonestly and defines the particulars of the offence in subsection (2). A person is liable on conviction on information to a term of custody not exceeding 6 years or to a fine or to both. On summary conviction a person is liable to custody for a term not exceeding 2 years or to a fine not exceeding £20,000 or to both.
- 21. Clause 13** concerns conspiracy to commit fraud outside the Island. There are three ways a person may be guilty of this offence. Firstly, if a party to the agreement constituting the conspiracy or the party's agent does anything in the Island in relation to this matter before the agreement's formation. Secondly, a party to the agreement became a party to the conspiracy in the Island either in person or through an agent. Thirdly, a party to the agreement, or a party's agent, did or omitted to do anything in the Island in connection with the conspiracy. This provision applies where the conspiracy would otherwise be triable in the Island but for the fact the parties to the offence had not intended it to take place in the Island.
- Subsection (3) clarifies that this provision does not affect the more general provisions relating to conspiracy set out in section 330 of the Criminal Code 1872.
- 22. Clause 14** provides that if a person within the Island aids, abets, counsels or procures the commission by another person of an offence in another jurisdiction that would be an offence under this Act if committed in the Island then the person will be liable on conviction to the same penalty as applies under this Act.
- Subsection (4) states that sections 237, 350, 351, 354 to 356 and 415 of the Criminal Code 1872 are not affected by this section.
- 23. Clause 15** provides that any action taken by a resident outside the Island which would, if it took place on the Island, be an offence under this Act will constitute an offence under this Act. Proceedings may be taken in the Island as if the offence had been committed in the Island. It does not matter if some parts of the offence took place in the Island or elsewhere. Subsection (4)(b) defines "resident".
- 24. Clause 16** is about evidence. Subsection (1) says that a person is not excused from answering any question or complying with any order made in proceedings relating to property on the ground that he or she may incriminate his or her spouse or civil partner of an offence under this Act or a related offence.
- Subsection (2) provides that in proceedings under this or a related Act any statement or admission made by the person in answering a question or complying with an order is not admissible in evidence against the person or his or her spouse or civil partner. This does not apply where they married or became civil partners after the making of the statement or admission.
- Subsection (3) defines proceedings relating to property and subsection (4) explains that a related offence is any other offence involving conspiracy to defraud, and any form of fraudulent conduct or purpose.

- 25. Clause 17** sets out the liability of bodies corporate and says that the officer as well as the body corporate is liable for an offence. Subsection (3) defines "officer".
- 26. Clause 18** refers to Schedules 1 to 3. Schedule 1 makes consequential amendments to the Theft Act 1981, the Criminal Law Act 1981, the Limitation Act 1984 and the Police Powers and Procedures Act 1998. Schedule 2 repeals certain provisions of the Theft Act 1981 and Schedule 3 contains some transitional and saving provisions.