

FRAUD BILL 2017

Explanatory Memorandum

1. *Clauses 1 and 2* deal with the short title of the resulting Act and its commencement.
2. *Clause 3* creates an offence of fraud and sets out the penalties for the offence. The clause also specifies that fraud may be committed by making a false representation, by failing to disclose information and by abuse of position (see clauses 4 to 6).
3. *Clause 4* provides that a person who dishonestly makes a false representation and hopes to make a gain for that person or another or to cause loss to another or to expose another to the risk of loss is in breach of that clause. The clause defines “representation” and specifies how a representation can be made and what constitutes a false representation.
4. *Clause 5* provides that the dishonest failure to disclose information to another which the person is required to disclose, where that person intends to make a gain for himself or another or to cause loss to another or to expose another to the risk of loss, constitutes failing to disclose information.
5. *Clause 6* provides that it is an abuse of position for a person who occupies a position in which that person is expected to safeguard and not to act against the financial interests of another person, to dishonestly abuse that position with the intention of making a gain for himself or another or causing loss to another or exposing another to the risk of loss.
6. *Clause 7* sets out what is meant by the terms “gain” and “loss”.
7. *Clause 8* creates an offence of possession or control of articles for use in fraud and specifies the penalties for that offence.
8. *Clause 9* makes it an offence for a person to make, adapt, supply or offer to supply any article for use in or in connection with fraud. The clause also specifies the penalty for that offence.
9. *Clause 10* defines what is meant by “article” for the purpose of certain provisions within the Bill and section 7(1)(b) of the Police Powers and Procedures Act 1998 (powers of a constable to stop and search persons, vehicles etc.).
10. *Clause 11* makes it an offence for a person to knowingly be a party to the carrying on of a business with intent to defraud creditors or for any other fraudulent purpose. The clause also specifies the penalty for that offence and provides the meaning of “fraudulent purpose” by reference to the Companies Act 1931.

11. *Clause 12* creates an offence of obtaining services dishonestly and specifies the penalty for that offence. A person is guilty of the offence where that person obtains services that are to be paid for, for himself or another by dishonest act, without making such a payment and that person intends not to make payment in full or at all.
12. *Clause 13* provides that a person may be guilty of conspiracy to commit fraud outside the Island, in circumstances where certain actions are taken in the Island by a person who is a party to the agreement that constitutes the conspiracy. The clause specifies in such circumstances the person is to be treated as if they had committed the offence under this Act and is subject to the same penalty, despite the fact that the intended fraud was not intended to take place in the Island. The clause is without prejudice to section 330 of the Criminal Code 1872.
13. *Clause 14* makes similar provision to clause 13 but in relation to aiding and abetting an act outside the Island which would constitute an offence under this Bill. Such a person is deemed to commit the offence under this Bill and will be liable on conviction to the penalty provided for that offence. Again the clause is without prejudice to certain provisions of the Criminal Code 1872.
14. *Clause 15* specifies that where a resident of the Island who does anything outside the Island which would constitute an offence under this Bill, proceedings may be taken in the Island and the offence may be treated as having been committed in the Island. The clause contains a definition for “resident of the Island”.
15. *Clause 16* makes certain provisions regarding evidence and provides definitions for terms used in that clause.
16. *Clause 17* specifies that where a body corporate is found guilty of an offence under this Bill, an officer of that body is also guilty of the offence and is liable to be proceeded against accordingly. The clause provides a definition of “officer”.
17. *Clause 18* refers to Schedules 1 to 3 which contain amendments, repeals and transitional and savings provisions respectively.
18. The resulting Act is not expected to have any financial or human resource implications.
19. 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.



Ellan Vannin

FRAUD BILL 2017

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Ellan Vannin

FRAUD BILL 2017

- 1 **A BILL** to make provision for, and in connection with, criminal liability for
 2 fraud and obtaining services dishonestly; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

3 **PART 1 – INTRODUCTORY**

4 **1 Short title**

5 The short title of this Act is the Fraud Act 2017.

6 **2 Commencement**

- 7 (1) This Act (other than section 1 and this section) comes into operation on
 8 the day appointed by the Department of Home Affairs and different days
 9 may be appointed for different provisions and different purposes.
- 10 (2) An order under subsection (1) may include such supplemental,
 11 incidental, consequential and transitional provisions as appear to the
 12 Department of Home Affairs to be necessary or expedient.

13 **PART 2 – FRAUD**

14 **3 Fraud**

15 P2006/35/1 and drafting

- 16 (1) A person is guilty of fraud if he or she is in breach of any of the sections
 17 listed in subsection (2) (which provide for different ways of committing
 18 the offence).
- 19 (2) The sections are —
- 20 (a) section 4 (fraud by false representation);
- 21 (b) section 5 (fraud by failing to disclose information); and
- 22 (c) section 6 (fraud by abuse of position).

- 1 (3) A person who is guilty of fraud is liable —
- 2 (a) on conviction on information, to custody for a term not exceeding
- 3 12 years or to a fine (or to both);
- 4 (b) on summary conviction, to custody for a term not exceeding 2
- 5 years or to a fine not exceeding £20,000 (or to both).

6 **4 Fraud by false representation**

7 P2006/35/2

- 8 (1) A person is in breach of this section if he or she —
- 9 (a) dishonestly makes a false representation; and
- 10 (b) intends, by making the representation —
- 11 (i) to make a gain for the person or another; or
- 12 (ii) to cause loss to another or to expose another to a risk of
- 13 loss.
- 14 (2) A representation is false if —
- 15 (a) it is untrue or misleading; and
- 16 (b) the person making it knows that it is, or might be, untrue or
- 17 misleading.
- 18 (3) “Representation” means any representation as to fact or law, including a
- 19 representation as to the state of mind of —
- 20 (a) the person making the representation; or
- 21 (b) any other person.
- 22 (4) A representation may be express or implied.
- 23 (5) For the purposes of this section a representation may be regarded as
- 24 made if it (or anything implying it) is submitted in any form to any
- 25 system or device designed to receive, convey or respond to
- 26 communications (with or without human intervention).

27 **5 Fraud by failing to disclose information**

28 P2006/35/3

- 29 A person is in breach of this section if he or she —
- 30 (a) dishonestly fails to disclose to another person information which
- 31 the person is under a legal duty to disclose; and
- 32 (b) intends, by failing to disclose the information —
- 33 (i) to make a gain for the person or another; or
- 34 (ii) to cause loss to another or to expose another to a risk of
- 35 loss.

6 Fraud by abuse of position

P2006/35/4

- (1) A person is in breach of this section if he or she —
- (a) occupies a position in which the person is expected to safeguard, or not to act against, the financial interests of another person;
 - (b) dishonestly abuses that position; and
 - (c) intends, by means of the abuse of that position —
 - (i) to make a gain for the person or another; or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A person may be regarded as having abused his or her position even though the person's conduct consisted of an omission rather than an act.

7 “Gain” and “loss”

P2006/35/5

- (1) The references to gain and loss in sections 4 to 6 are to be read in accordance with this section.
- (2) “Gain” and “loss” —
- (a) extend only to gain or loss in money or other property;
 - (b) include any such gain or loss whether temporary or permanent, and “property” means any property whether real or personal (including things in action and other intangible property).
- (3) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.
- (4) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.

8 Possession etc. of articles for use in frauds

P2006/35/6 and drafting

- (1) A person is guilty of an offence if the person has in his or her possession or under his or her control any article for use in the course of or in connection with any fraud.
- (2) A person guilty of an offence under this section is liable —
- (a) on conviction on indictment, to custody for a term not exceeding 6 years or to a fine (or to both);
 - (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £10,000 (or to both).

- 1 **9 Making or supplying articles for use in frauds**
2 P2006/35/7 and drafting
- 3 (1) A person is guilty of an offence if he or she makes, adapts, supplies or
4 offers to supply any article —
- 5 (a) knowing that it is designed or adapted for use in the course of or
6 in connection with fraud; or
- 7 (b) intending it to be used to commit, or assist in the commission of,
8 fraud.
- 9 (2) A person guilty of an offence under this section is liable —
- 10 (a) on conviction on indictment, to custody for a term not exceeding
11 12 years or to a fine (or to both);
- 12 (b) on summary conviction, to custody for a term not exceeding 2
13 years or to a fine not exceeding £20,000 (or to both).

- 14 **10 “Article”**
15 P2006/35/8(1)
- 16 (1) For the purposes of the provisions specified in subsection (2) “**article**”
17 includes any program or data held in electronic form.
- 18 (2) Those provisions are —
- 19 (a) sections 8 and 9; and
- 20 (b) section 1(7)(b) (powers of a constable to stop and search persons,
21 vehicles etc.) of the *Police Powers and Procedures Act 1998*, so far as
22 it relates to articles for use in the course of or in connection with
23 fraud.

- 24 **11 Participating in fraudulent business**
25 P2006/35/9 and drafting
26
- 27 (1) A person is guilty of an offence if he or she is knowingly a party to the
28 carrying on of a business with intent to defraud creditors or for any other
29 fraudulent purpose.
- 30 (2) A person guilty of an offence under this section is liable —
- 31 (a) on conviction on indictment, to custody for a term not exceeding
32 10 years or to a fine (or to both);
- 33 (b) on summary conviction, to custody for a term not exceeding 12
34 months or to a fine not exceeding £10,000 (or to both).
- 35 (3) “Fraudulent purpose” has the same meaning as in section 259 of the
36 *Companies Act 1931*.
- 37 (4) This section is in addition to sections 255 to 259 (offences antecedent to or
38 in course of winding up) of the *Companies Act 1931*.

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PART 3 – OBTAINING SERVICES DISHONESTLY

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12 Obtaining services dishonestly

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P2006/35/11 and drafting

4

(1) A person is guilty of an offence under this section if he or she obtains services for the person or another –

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6

(a) by a dishonest act; and

7

(b) in breach of subsection (2).

8

(2) A person obtains services in breach of this subsection if –

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(a) they are made available on the basis that payment has been, is being or will be made for or in respect of them;

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(b) the person obtains them without any payment having been made for or in respect of them or without payment having been made in full; and

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(c) when the person obtains them, he or she knows –

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(i) that they are being made available on the basis described in paragraph (a); or

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(ii) that they might be,

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but intends that payment will not be made, or will not be made in full.

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(3) A person guilty of an offence under this section is liable –

21

(a) on conviction on information, to custody for a term not exceeding 6 years or to a fine (or to both);

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23

(b) on summary conviction, to custody for a term not exceeding 2 years or to a fine not exceeding £20,000 (or to both).

24

25

PART 4 – JURISDICTION

26

13 Conspiracy to commit fraud outside the Island

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P1993/36/5(3) and drafting

28

(1) A person may be guilty of conspiracy to commit an offence under this Act if –

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(a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in the Island in relation to the agreement before its formation;

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(b) a party to it became a party in the Island (by joining it either in person or through an agent); or

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35

(c) a party to it, or a party's agent, did or omitted anything in the Island in pursuance of it,

36

1 and the conspiracy would be triable in the Island but for the fraud which
2 the parties to it had in view not being intended to take place in the
3 Island.

- 4 (2) Where subsection (1) applies, the person —
- 5 (a) commits the offence under this Act; and
- 6 (b) is liable on conviction to the penalty provided for that offence in
7 this Act.
- 8 (3) To avoid doubt, the provisions of section 330 of the *Criminal Code 1872*
9 are not affected.

10 **14 Aiding and abetting fraud outside the Island**

11 G/2009/XVI/11 and drafting

- 12 (1) Subsection (3) applies if a person, within the Island, aids, abets, counsels
13 or procures the commission by another person of an offence specified in
14 subsection (2).
- 15 (2) An offence referred to in subsection (1) is an offence committed in
16 another jurisdiction which would be an offence under this Act if
17 committed in the Island.
- 18 (3) A person referred to in subsection (1) —
- 19 (a) commits the offence under this Act; and
- 20 (b) is liable on conviction to the penalty provided for that offence in
21 this Act.
- 22 (4) To avoid doubt, the provisions of sections 237, 350, 351, 354 to 356 and
23 415 of the *Criminal Code 1872* are not affected.

24 **15 Offences committed outside the Island**

- 25 (1) This section applies if —
- 26 (a) a resident of the Island does anything in a country or territory
27 outside the Island; and
- 28 (b) the act would, if it took place in the Island, constitute an offence
29 under this Act.
- 30 (2) In such a case —
- 31 (a) the act constitutes the offence concerned;
- 32 (b) proceedings for the offence may be taken in the Island;
- 33 (c) the offence may be treated for incidental purposes as having been
34 committed in the Island.
- 35 (3) For the purposes of this section, an offence is committed irrespective of
36 whether the acts which form part of the offence take place in the Island
37 or elsewhere.

- 1 (4) In this section —
- 2 (a) a reference to an offence includes —
- 3 (i) an attempt, conspiracy or incitement to commit an offence;
- 4 (ii) aiding, abetting, counselling or procuring the commission
- 5 of an offence;
- 6 (b) a resident of the Island means —
- 7 (i) an individual who is ordinarily resident in the Island; or
- 8 (ii) a body corporate or partnership that is incorporated or
- 9 formed under the laws of the Island.

10 **PART 5 - SUPPLEMENTARY**

11 **16 Evidence**

12 P2006/35/13

- 13 (1) A person is not to be excused from —
- 14 (a) answering any question put to the person in proceedings relating
- 15 to property; or
- 16 (b) complying with any order made in proceedings relating to
- 17 property,
- 18 on the ground that doing so may incriminate the person or his or her
- 19 spouse or civil partner of an offence under this Act or a related offence.
- 20 (2) But, in proceedings for an offence under this Act or a related offence, a
- 21 statement or admission made by the person in —
- 22 (a) answering such a question; or
- 23 (b) complying with such an order,
- 24 is not admissible in evidence against the person or (unless they married
- 25 or became civil partners after the making of the statement or admission)
- 26 his or her spouse or civil partner.
- 27 (3) “Proceedings relating to property” means any proceedings for —
- 28 (a) the recovery or administration of any property;
- 29 (b) the execution of a trust; or
- 30 (c) an account of any property or dealings with property,
- 31 and “property” means money or other property whether real or personal
- 32 (including things in action and other intangible property).
- 33 (4) “Related offence” means —
- 34 (a) conspiracy to defraud;
- 35 (b) any other offence involving any form of fraudulent conduct or
- 36 purpose.

1 **17 Liability of officers for offences by body corporate**

2 P2006/35/12 and drafting

3 (1) Subsection (2) applies if an offence under this Act is committed by a
4 body corporate and it is proved that an officer of the body corporate
5 authorised, permitted, participated in, or failed to take all reasonable
6 steps to prevent the commission of the offence.

7 (2) The officer, as well as the body corporate, is guilty of the offence and
8 liable to be proceeded against and punished accordingly.

9 (3) In this section “officer” includes —

10 (a) a director, secretary or other similar officer;

11 (b) a person purporting to act as a director, secretary or other similar
12 officer;

13 (c) if the affairs of the body corporate are managed by its members, a
14 member; and

15 (d) if the body corporate has a registered agent, as required by section
16 74 of the *Companies Act 2006* and section 5 of the *Limited Liability*
17 *Companies Act 1996*, the registered agent.

18 **18 Amendments, repeals and transitional and saving provisions**

19 (1) Schedule 1 contains amendments.

20 (2) Schedule 2 contains repeals.

21 (3) Schedule 3 contains transitional and saving provisions.

SCHEDULE 1

[Section 18(1)]

AMENDMENTS

1 Theft Act 1981

- (1) The *Theft Act 1981* is amended as follows.
- (2) In section 20(1) (liability of company officers for offences by company), for “14, 15, 16, 17, 18 or 19”, substitute “18 or 19”.
- (3) In section 22(3) (suppression, etc, of documents – interpretation), omit the words ““deception” has the same meaning as in section 14, and”.
- (4) In section 24A (dishonestly retaining a wrongful credit), omit subsections (3) and (4) and after subsection (2), insert —
 - “(2A) A credit to an account is wrongful to the extent that it derives from —
 - (a) theft;
 - (b) blackmail;
 - (c) fraud (contrary to section 3 of the *Fraud Act 2017*); or
 - (d) stolen goods.”.
- (5) In subsection 24A(7), for the words “subsection (4)”, substitute “subsection (2A)”.
- (6) For subsection 24A(9), substitute —
 - “(9) “Account” means an account kept with —
 - (a) a bank; or
 - (b) a person carrying on a business which falls within subsection (10) below.
 - (10) A business falls within this subsection if —
 - (a) in the course of the business money received by way of deposit is lent to others; or
 - (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.
 - (11) References in subsection (10) above to a deposit must be read with —
 - (a) section 3 of the *Financial Services Act 2008*; and
 - (b) any relevant order under that section, but any restriction on the meaning of deposit which arises from the identity of the person making it is to be disregarded.

- (12) For the purposes of subsection (10) above —
- (a) all the activities which a person carries on by way of business shall be regarded as a single business carried on by him; and
 - (b) “money” includes money expressed in a currency other than sterling.”.
- (7) In section 26(4) (scope of offences relating to stolen goods – interpretation), for “in the circumstances described in section 14(1)”, substitute “, subject to subsection (5) below, by fraud (within the meaning of the *Fraud Act 2017*)”.
- (8) After section 26(4), insert —
- “(5) Subsection (1) above applies in relation to goods obtained by fraud as if —
- (a) the reference to the commencement of this Act were a reference to the commencement of the *Fraud Act 2017*; and
 - (b) the reference to an offence under this Act were a reference to an offence under section 3 of that Act.”
- (9) In section 27 (going equipped for stealing, etc) —
- (a) in subsections (1) and (3) for the words “burglary, theft or cheat”, substitute “burglary or theft”; and
 - (b) in subsection (5) omit “, and “cheat” means an offence under section 14”.

2 Criminal Law Act 1981

In paragraph 2 of Schedule 6 to the *Criminal Law Act 1981* (compensation orders), after the words “*Theft Act 1981*” insert “or *Fraud Act 2017*”.

3 Limitation Act 1984

In section 4 of the *Limitation Act 1984* (special time limit in case of theft), for subsection (5)(b), substitute —

- “(b) obtaining any chattel (in the Island or elsewhere) by —
- (i) blackmail (within the meaning of section 23 of the *Theft Act 1981*); or
 - (ii) fraud (within the meaning of the *Fraud Act 2017*);”.

4 Police Powers and Procedures Act 1998

In section 1 of the *Police Powers and Procedures Act 1998* (power of constable to stop and search persons, vehicles etc.), in subsection (8), for paragraph (d), substitute —

- “(d) fraud (contrary to section 3 of the *Fraud Act 2017*).”.

SCHEDULE 2

[Section 18(2)]

REPEALS

The following provisions of the *Theft Act 1981* are repealed —

- (a) sections 14, 15, 15A 15B, 16 and 17;
- (b) section 22(2); and
- (c) section 24A(3) and (4).

SCHEDULE 3

[Section 18(3)]

TRANSITIONAL AND SAVING PROVISIONS

1 Abolition of deception offences

- (1) The repeal of the provisions specified in paragraphs (a) and (b) of Schedule 2 does not affect any liability, investigation, legal proceedings or penalty for or in respect of any offence partly committed before the repeal of the provisions so specified.
- (2) An offence is partly committed before the commencement of paragraphs (a) and (b) of Schedule 2 if —
 - (a) a relevant event occurs before their commencement; and
 - (b) another relevant event occurs on or after their commencement.
- (3) “Relevant event”, in relation to an offence, means any act, omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

2 Dishonestly retaining a wrongful credit under the Theft Act 1981

The repeal of section 24A(3) and (4) of the *Theft Act 1981* does not affect the operation of section 24A(7) and (8) of that Act in relation to credits falling within section 24A(3) or (4) of that Act and made before the repeal.

3 Scope of offences relating to stolen goods under the Theft Act 1981

Nothing in paragraph 1(7) or (8) of Schedule 1 affects the operation of section 26 of the *Theft Act 1981* in relation to goods obtained in the circumstances described in section 14(1) of that Act where the obtaining is the result of a deception made before the date that paragraph comes into operation.

4 Limitation periods under the Limitation Act 1984

Nothing in paragraph 2 of Schedule 1 affects the operation of section 4 of the *Limitation Act 1984* in relation to chattels obtained in the circumstances described in section 14(1) of the *Theft Act 1981* where the obtaining is a result of a deception made before the date that paragraph comes into operation.

IN THE KEYS

FRAUD BILL 2017

A BILL to make provision for,
and in connection with,
criminal liability for fraud and
obtaining services dishonestly;
and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MISS BETTISON M.H.K.

FEBRUARY 2017