

4.2. Financial Intelligence Unit Bill 2015 – Second Reading approved

Mr Watterson to move:

That the Financial Intelligence Unit Bill 2015 be read a second time.

The Speaker: We turn now to the Financial Intelligence Unit Bill. I call on the mover, the Hon. Member for Rushen, Mr Watterson.

Mr Watterson: Mr Speaker, the main purpose of this Bill is to establish an independent Financial Intelligence Unit with enhanced powers to gather additional information.

The Isle of Man has had a Financial Intelligence Unit, as part of the Financial Crimes Unit, since 1998-99; and as financial crime has got more sophisticated, other international jurisdictions have moved away from having the responsibility for financial intelligence-gathering and the investigation of serious and complex fraud in one body.

The Island is to undergo a Moneyval assessment in April/May 2016. Jersey underwent a similar assessment in January 2015 and as part of their preparations decided to put in place legislation introducing an enabling power to make regulations for the specific purpose of establishing a Financial Intelligence Unit in legislation. This commitment by Jersey was consistent with Article 12 of the Warsaw Convention.

Moneyval agreed that this was necessary to ensure Jersey's Financial Intelligence Unit was put on a statutory footing with its own governance. The Moneyval evaluation also identified that Jersey needed to provide its FIU with powers to obtain additional information when intelligence gathering.

The absence of these additional powers combined with the Financial Intelligence Unit not being established in legislation will be likely to be commented on adversely in the Island's own Moneyval evaluation in 2016.

This Bill seeks to remedy the situation for the Isle of Man by establishing the Financial Intelligence Unit in legislation with the additional information gathering powers before the Moneyval assessment next year.

I beg to move that the Financial Intelligence Unit Bill 2015 be read for a second time.

The Speaker: Mr Thomas, Hon. Member.

Mr Thomas: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: The Hon. Member for Michael.

Mr Cannan: Thank you, Mr Speaker.

I understand the Moneyval situation very clearly but I think the Hon. Minister needs to go some further way to explain to me, in particular, why we had to set up yet another completely separate unit.

The Financial Crimes Unit is currently part of the Constabulary, has the powers of the Constabulary; it appears to me that the Financial Intelligence Unit will not carry the full powers of a law enforcement agency and therefore will have to use and liaise with and utilise the Constabulary when it comes to pursuit of crime or identified crime. How will that work? I would like to get clarification on exactly how that will work because it seems to me that we are going to be doing quite a lot of duplication. We are going through quite a significant duplication process here by establishing this separate unit.

Also, I think, depending on how the Minister explains the situation, just in terms of general policy and general Isle of Man Government terms, it goes against the grain somewhat to be establishing yet another separate ... effectively we have got a board here. You are appointing a number of individuals to oversee this operation, I think that if we look at Part 3, FIU board, we can see clearly that this is becoming another part of Government, shall we say, another unit within Government. We have talked about Agenda for Change, we have talked about ensuring we are slim-line and talked about ensuring that we are maintaining or getting rid of the silo mentality.

I accept, obviously, the Minister may well come to me and stand up in a minute and give a thorough explanation as to why this is necessary for the continued recognition of the Island as a responsible jurisdiction. Nevertheless, why can't Moneyval as an organisation accept that a Financial Intelligence Unit remaining within the Constabulary, under the control of the Chief Constable is not an acceptable way to go forward? I think that is the key question that I would like to see answered in this respect.

I am also concerned about this business of the duplication of civil servants effectively staffing the FIU board and not therefore having the training perhaps, the recognition, the understanding that a police officer may have. And it almost seems illogical to me that this is not headed up formally by an officer of the Constabulary who can liaise directly with his colleagues.

I would also like to know how that is going to work from a data protection perspective.

And the final point I have is that the FIU board is to consist of the Attorney General: is there not going to be a conflict – if there was a legal case subsequently to arise that concerned the Financial Intelligence Unit, the mere fact that the Attorney General is a director of this board surely would put him into conflict were the Government and Council of Ministers to require proper independent, effectively or Attorney General advice. Because as soon as he is on the board, he and his office will be conflicted and will mean that somehow Council of Ministers or whoever is seeking the relevant guidance will have to go elsewhere and potentially this will incur – were there to be a long case, a detailed case – would presumably mean that we are going to have significant costs attached to the taxpayer of having to hire in outside resources to fulfil the legal role of the Attorney General.

So just on those issues it would be great if we could have a full explanation from the Minister and a more detailed one, I think, as to the Moneyval question and in particular just sticking on that, I would be interested to know what consultation is taking place with Moneyval in respect of this and whether Moneyval have indeed been or directed the Government as to the way forward or are we merely looking at how other jurisdictions have dealt with this issue.

Thank you, Mr Speaker.

The Speaker: I call on the mover to reply, Mr Watterson.

Mr Watterson: Just to start with the Hon. Member's last point first – yes, we have looked at how other members have done this and how Moneyval have commented on them in other jurisdictions when coming forward with this Bill, and that is why we are putting this structure in place in order to remove another obstacle from a favourable Moneyval assessment.

The Financial Intelligence Unit will have law enforcement powers; it will have police officers in it in addition to other people with different law enforcement powers, customs officers and the like. So there will be an ability for these officers to collect data, to use that data for the prevention and detection of crime.

Later on in his contribution the Hon. Member also referred to how this would work with data protection: well, one of the major caveats of data protection is data sharing for the prevention and detection of crime, which is how this would be used.

I appreciate the points that he was making about the danger here from a quango, but actually we are not talking about additional people; what we are talking about is making sure that we get the appropriate set of governance around this that is internationally recognised.

As the Hon. Member pointed out, there are no new people being employed to go into this board. It is going to be chaired by the Attorney General. The board consists of the Attorney General, the Chief Constable and the Collector of Customs and Excise and the separation is important inasmuch as you will have, shall we say, more regular fraud and thefts and other CID within the Police and that will be going on there, whilst the FIU will be doing its specified work elsewhere with the appropriate governance around it.

So there will be that separation of investigative powers between the Police and the FIU even if both of them may be police officers. That can prove very handy when you have got things such as investigations against the Constabulary as well, so you have got a separate governance structure and a separate lead in to that.

I am struggling to consider a scenario where the Attorney General would have a conflict. This is a unit that is designed to enforce the law on the Isle of Man. The Attorney General obviously brings prosecutions for, if you like the Government, but for the good of the Island, so I am not sure where he would have a conflict. Of course, nowadays we have the luxury of having the Solicitor General to go to should the Attorney General have a conflict, but I do not really see where a conflict might exist. I will look at that and see if there is anything I need to add on that before I come back at a future reading.

But with that, I beg to move, Mr Speaker.

The Speaker: Hon Members I put the motion that the Financial Intelligence Unit Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR	AGAINST
Mr Bell	None
Mr Boot	
Mr Cannan	
Mr Gawne	
Mr Harmer	
Mr Houghton	
Mr Joughin	
Mr Karran	
Mr Malarkey	
Mr Peake	
Mr Quayle	
Mr Robertshaw	
Mr Ronan	
Mr Shimmin	
Mr Skelly	
Mr Teare	
The Speaker	
Mr Thomas	
Mr Watterson	

The Speaker: With 19 for, none against, the motion therefore carries.