

BENEFICIAL OWNERSHIP (AMENDMENT) BILL 2020

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, the Hon. A. L. Cannan MHK, Minister for the Treasury.

1. INTRODUCTION

These explanatory notes relate to the *Beneficial Ownership (Amendment Bill) 2020* (the "Bill") and have been prepared by the Cabinet Office in partnership with the Treasury, 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.

It is recommended that these notes be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

The Bill has been subject to consultation and has been updated to take into account comments raised.

An Impact and Data Protection Assessment of the Bill have been prepared.

In the opinion of the Member moving the Bill, the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

If approved, it is not anticipated that the resulting Act will significantly increase the administrative burden on the Central Registry; nor will it involve any, or any significant, change to Government income or expenditure.

2. BACKGROUND

The Beneficial Ownership (Amendment) Bill 2020 (the Bill) amends the Beneficial Ownership Act 2017, with the main purposes being:

- i) to further improve the accuracy of the data held on the beneficial ownership register;
- ii) to meet international standards regarding timeliness for submission of information to the beneficial ownership register; and
- iii) to permit the extraction of anonymised statistical data by relevant authorities, in order to assist with international reporting obligations.

3. STRUCTURE OF THE BILL

The Bill has 17 clauses and 3 parts.

Part 1 of the Bill (clauses 1 and 2) contains preliminary matters.

Part 2 of the Bill (clauses 3 to 16) lists the proposed amendments to the various Sections and Schedule 1, of the Beneficial Ownership Act 2017.

Part 3 of the Bill (clause 17) includes consequential amendments.

4. COMMENTARY ON CLAUSES

Clauses 1 and 2 provide respectively for the short title and for the commencement of the resulting Act.

Clause 3 confirms the name of the Act to be amended by the Bill; the Beneficial Ownership Act 2017.

Clause 4 amends the definition of "Department" to "the Department". The text in the Beneficial Ownership Act 2017 goes on to define it as a reference to the Department for Enterprise. When "Department" is used throughout the Beneficial Ownership Act 2017 it is a reference to the Department of Enterprise only. However, the change to "permitted purpose" made by the Beneficial Ownership (Amendment) Act 2020 refers to "a Department" as a general term.

The amendment added by clause 4 clarifies that in the definition of "permitted purpose", the reference to "Department or Statutory Board" in this one instance, is consistent to that of the Interpretation Act 2015.

The amendment in the definition of "Department" is to make sure there is no doubt that the definition in "permitted purpose" is different to that used throughout the rest of the Beneficial Ownership Act 2017.

It also amends the definition of "Authority" to "the Authority" to differentiate when the text is referring to the Isle of Man Financial Services Authority and when it is using "authority" in a general sense.

The reason for the amendment to the definition of "permitted purpose" is to allow the collection of statistical data by a government Department or Statutory Board. This is to alleviate confusion over whether a government Department or Statutory Board could collect generalised data and statistics to show the size, effective running, levels of compliance etc. that may be necessary to make an annual report, supply anonymised data for international assessment purposes or for other governmental reasons.

Clause 5 amends section 7(3) of the Beneficial Ownership Act 2017 (notice of appointment of nominated officer) so that the requirement for a legal entity to notify the DfE within one month of any changes of its Nominated Officer is altered to notification within 21 days. This is to meet FATF requirements that for any information to be considered accurate and timely on a register, it must be updated within three weeks.

Clause 6 amends section 9(3) of the Beneficial Ownership Act 2017 (duty of legal owners) to add in a requirement that a legal owner must, within 21 days of incorporation of the legal entity, or on receipt of a Notice to do so, supply the required identification details to the nominated officer. This is in response to the deficiency noted in the IoM's Mutual Evaluation Report regarding Recommendation 24 that *"It cannot be determined that accurate, complete and current beneficial ownership information will be available for 1931 companies, limited partnerships or general partnerships."* (Note: MONEYVAL later accepted that the reference to general partnerships is incorrect and it no longer applies).

As noted in paragraph 277 of the MER, relevant beneficial ownership details had to be provided to the nominated officer within three months of someone becoming a registered shareholder of a company. Similar three-month periods for notification of a change of details have been ruled in other MERS, as too long to ensure accuracy due to the timeliness of updating the details held. It was felt that at the point of incorporation all such details should be at hand, so a 21-day period of notification to the nominated officer should suffice.

Clause 7 amends section 12(2) of the Beneficial Ownership Act 2017 (Changes to required details). The amendment alters the one-month period for a legal owner to notify the Nominated Officer of changes of required details to within 21 days of the changes being made. The amendment is made for consistency purposes to move away from one month requirements to as soon as reasonably practicable, but in any event within 21 days of the date on which the changes were made.

Clause 8 amends section 14 of the Beneficial Ownership Act 2017 (further consequences of failure to disclose beneficial ownership). In section 14(5) reference is made to "2 weeks" where in the same section "14 days" is also referred to. For drafting consistency, the reference to 2 weeks is altered to 14 days.

Clause 9 amends section 15 (disclosure of beneficial ownership information by nominated officer). The requirement for the Nominated Officer to supply to a government body when served with a Notice, information regarding non-registrable beneficial owners is reduced from one month to within 21 days. This is consistent with changes to other time limits for supply of information to within 21 days.

Clause 10 amends section 20 of the Beneficial Ownership Act 2017 (compulsory submission of registrable beneficial ownership information to the Department). It firstly gives the Department for Enterprise the power to issue regulations on the actions required by the nominated officer. This is so that in the future it can further expand upon what is considered to be the "taking of reasonable steps" without resorting to primary legislation which is slow to bring into force. This will help the authorities to further guide industry if they indicate they have issues on what is considered "reasonable steps", or there are future changes in international requirements.

It secondly changes the actions required by the nominated officer to obtain information in the circumstances prescribed. It changes from an option to a requirement because the nature of when such a notice is issued, involves legal requirements not being adhered to. In such circumstances, it is not felt sufficient to allow the nominated officer the option of not acting.

Thirdly, it adds an additional requirement when the nominated officer supplies information that an entity has no registrable beneficial owners to the Department for Enterprise. It must be certified that, if any departmental regulations on taking "reasonable steps" to ascertain that position have been issued, they have been adhered to. It also requires the nominated officer to certify whether or not they have had to issue a notice to ascertain that position. This is to add further checks and balances so that the IoM can ascertain that it is taking measures to ensure the data submitted to the register is accurate.

Fourthly, it adds into subsection (7), with regards to the changes brought in by this Bill, that required details are submitted to the Department of Enterprise by time limits which we believe will meet international standards regarding timeliness.

Clause 11 amends section 21 of the Beneficial Ownership Act 2017 (voluntary submission of non-registrable beneficial ownership information). It firstly gives the Department for Enterprise the power to issue regulations on the information relating to non-registrable beneficial owners. This is so that in the future it can further expand upon the requirements in this area without resorting to primary legislation, which is slow to bring into force. This will help the authorities to further guide industry if they indicate they have issues on what is required, or there are future changes in international requirements.

It adds in requirements that, if a voluntary submission is made, it is accompanied by the same information as is stipulated for registrable beneficial ownership.

Clause 12 amends section 25 of the Beneficial Ownership Act 2017 (department not liable for accuracy of information submitted). It adds in new subsections which gives the Department the power to make enquires to verify the information submitted to it and correct or remove any information from the database it considers to be false,

inaccurate or misleading. If the Department for Enterprise takes such an action, they must notify the Nominated Officer of such so that they are aware.

It also provides that the Department may make regulations to give effect to these powers. These additional powers are necessary for the IoM to meet the international requirements to identify and verify the information on its database to ensure it is timely and accurate.

Clause 13 creates a new section 26A of the Beneficial Ownership Act 2017 (Requirement to notify errors in the Database). This creates a new requirement that a person accessing the database must notify the Department if they consider an entry is materially incorrect. Failing to make such notification within one week is an offence.

This mirrors requirements put in place by the UK and is to help ensure the accuracy of the information on the database.

Clause 14 amends section 32 of the Beneficial Ownership Act 2017 (Regulations). Any references to Department and authority in this section are amended to read "the Department" and "the authority" to fit with the new definition as provided and explained at Clause 4 above.

Clause 15 amends section 42 (Statement of compliance in annual returns). This removes the requirement for the legal entity to submit a compliance certification countersigned by the Nominated Officer with its Annual Return. It is replaced by requirements for separate compliance certificates to be submitted at the time of the Annual Return by the legal entity and the Nominated Officer. This is initiated by the intended move to a fully digitalised registry, which will not be able to cater for dual certification of an electronically submitted document.

Clause 16 amends Schedule 1 (Oversight by the Authority) of the Beneficial Ownership Act 2017 to include minor references and changes, as altered by the amendments in the Bill.

It also amends the offence, which may be subject to a civil penalty, of furnishing information that is false, inaccurate or misleading, to stipulating that the furnishing must have been knowingly or recklessly carried out.

Clause 17 makes consequential amendments. This lists all consequential amendments required in other pieces of legislation other than the Beneficial Ownership Act 2017.