



FINANCIAL INTELLIGENCE UNIT BILL 2015

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr Watterson.

INTRODUCTION

- 1.** These explanatory notes relate to the Financial Intelligence Unit Bill 2015. They have been prepared by the Cabinet Office 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.

BACKGROUND

- 3.** The Isle of Man has a mature and sophisticated financial services sector. To maintain this status it needs to ensure that it combats financial crime and money laundering in line with internationally recognised standards.
- 4.** In 1998-99 a Financial Crime Unit was established within the Department of Home Affairs ("DHA") which comprised both a Financial Intelligence Unit and a Serious Fraud Unit ("the FCU").
- 5.** The FCU has twice been subject to inspection by the International Monetary Fund ("the IMF") during its review of the Island's regulatory and enforcement regimes. Those inspections broadly found the FCU to be effective and largely compliant with international standards.
- 6.** The FCU is a member of the Egmont Group of financial intelligence units, which effectively set standards for such units across the world. As well as offering a network of financial intelligence units, the Egmont Group also provides a forum for the development of best practice. Membership of the Egmont Group is recommended in the Interpretive Notes of the Financial Action Task Force ("FATF") 40 recommendations. The Egmont Group define a financial intelligence unit as:

"A central national agency responsible for receiving (and, as permitted requesting), analysing and disseminating to the competent authorities, disclosures of financial information:

- (i)** Concerning suspected proceeds of crime and potential financing of terrorism, or,

(ii) National legislation or regulation in order to counter money laundering and terrorism financing”.

- 7.** There are four models of financial intelligence unit:
- (a) **Judicial model** – sits with the judicial branch of government and works alongside existing law enforcement agencies;
 - (b) **Law enforcement model** – sits alongside or directly alongside existing law enforcement agencies and reports directly to the head of law enforcement, (which to all intent and purpose is the current Isle of Man model);
 - (c) **Administrative model** – a centralised, independent administrative body that receives and disseminates information to existing law enforcement agencies; and
 - (d) **Hybrid model**- combines at least two other models.

However nowhere in the world is there a financial intelligence unit which is similar to the FCU, which has responsibility for financial intelligence and the investigation of serious fraud and complex fraud.

- 8.** The work of the Financial Intelligence Unit within the FCU has often been the subject of adverse comment in that its operational capacity and performance has been compromised by not having a dedicated workforce, with police constables in the FCU often being required to carry out more high priority duties in the constabulary.
- 9.** The Island is to undergo a MONEYVAL assessment by the World Bank in April/ May 2016. Jersey has already had 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. MONEYVAL agreed that it was necessary to ensure that Jersey’s financial intelligence unit was on a statutory footing with its own governance and with powers to obtain additional information when gathering intelligence. The absence of a) an independent financial intelligence unit established on a statutory footing and b) the absence of the broader information gathering powers is likely to be commented on in the Island’s MONEYVAL evaluation in 2016.

SUMMARY

- 10.** In brief the Bill provides for:
- the establishment of an independent financial intelligence unit as a body corporate (“the FIU”);
 - the separation of information gathering work concerning the proceeds of crime or financing of terrorism from the criminal investigations unit; and
 - an increase in the information gathering powers of the FIU in line with other international jurisdictions.
- 11.** The Cabinet Office believes that the creation of the FIU in statute will put the unit on the same footing as those in other jurisdictions and better enable it to meet its

international obligations. The split of the current functions of the FCU into the FIU and a separate criminal investigations unit will ensure that the FIU is independently and adequately staffed and will have its own governance arrangements.

- 12.** The enhanced information gathering powers of the FIU will allow the unit to ask for additional information from both the initial provider or a person who is not the initial provider but who is a) mentioned in or is otherwise identifiable from the information received or b) to the reasonable knowledge or belief of the FIU from a person who, holds information that is relevant to the information received.
 - 13.** The other functions powers referred to in the Bill are already carried out by the financial intelligence unit part of the existing FCU.
 - 14.** The Bill comprises 36 clauses and 3 schedules.
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NOTES ON CLAUSES

- 15.** **Clauses 1 and 2** give the short title of the resulting Act and provide that the Act may come into operation on a day, or days, appointed by the DHA.
- 16.** **Clause 3** sets out various defined terms which are used throughout the Bill including (inter alia) a definition of "financial crime" the definition of which may be amended by order of the DHA, after consultation with the FIU and its Board and subject to Tynwald approval.
- 17.** **Clause 4** establishes the FIU as a body corporate and enables the DHA to apply to the FIU part or parts of the Statutory Boards Act 1987 by order, after having consulted with the FIU and its Board and subject to Tynwald approval. Subsection (2) provides that Schedule 1, which contains provisions about the constitution, functions, Director, Board and staff of the FIU and other matters related to it, has effect.
- 18.** **Clause 5** sets out the general functions of the FIU as receiving, gathering, analysing, storing and sharing information about financial crime, assisting with the prevention and detection of financial crime, co-operating with law enforcement agencies (as defined in section 10) and contributing to the reduction of crime and the mitigation of its consequences. Subsection (2) confirms that the FIU also has such functions as are conferred on it in the Bill (including any regulations made under section 32) or any other statutory provision.
- 19.** **Clause 6** sets out the general powers of the FIU in pursuance of its functions, including (i) the ability to ask the Attorney General to recommend an investigation into an offence or alleged offence in relation to financial crime, when requested by the Chief Constable to do so, (ii) acting in support of the police force, (iii) when requested by the chief officer of any police force or constabulary outside the Island to act in support of their activities, (iv) to support other law enforcement agencies, (v) to enter into arrangements for co-operating with other bodies or persons and (vi) to assist with the provision of awareness training in relation to financial crime. Subsection (4) confirms that the FIU may provide such assistance as it considers

appropriate in response to a request from any government or public body in any country or territory outside the Island.

20. **Clause 7** sets out the powers of the FIU in relation to sharing information relating to financial crime within its possession and control with the Isle of Man Constabulary, any other police force or constabulary outside the Island, the Collector of Customs and Excise, law enforcement agencies and other persons the FIU considers appropriate. The FIU's powers to share information are subject to clauses 23 and 25.
21. **Clause 8** makes provision for the general operational control of the FIU to be carried out in accordance with paragraph 1 of Schedule 1 to the Bill and (subject to that paragraph) provides that the staff of the FIU and any officer serving with the FIU, are under the control and direction of the FIU.
22. **Clause 9** provides that the DHA may issue codes of practice relating to the exercise by the FIU of its functions, subject to consultation with the FIU, its Board and any other persons the DHA considers appropriate. Any such codes of practice are to be laid before Tynwald as soon as practicable and if Tynwald resolves that a code should be annulled it shall cease to have effect.
23. **Clause 10** defines "assigned matters", "law enforcement agency" and "revenue matters" which terms are used in Part 2 of the Bill. Subsection (2) provides that the DHA may amend the definitions in clause 10(1) of the Bill by order, subject to consultation with the FIU and its Board and subject to Tynwald approval.
24. **Clause 11** enables the FIU (for the purpose of its functions) to designate members of its staff as having the powers of a constable or of an officer of Customs and Excise for a limited or unlimited period and subject to any limitations contained in the designation. Such a designation may be made notwithstanding that any such staff member may already have or have had before becoming a FIU staff member, such powers. Subsection (5) provides that before designating a member of staff as a person with the powers of a constable or an officer of Customs and Excise, the FIU must be satisfied that the person is capable of effectively exercising such powers, has received adequate training in respect of the exercise of such powers and is otherwise a suitable person to exercise such powers. Subsection (6) provides that where a person held an office by which they had the powers of a constable or an officer of Customs and Excise before becoming a member of the FIU staff and has not resigned that office, the person's powers and duties under that office are to be treated as suspended for the time they are a member of staff of the FIU and revive upon their ceasing to be a member of staff with the FIU and returning to that office.
25. **Clause 12** provides that any person designated by the FIU as a constable shall have the powers and privileges of a constable in the Island whether under any enactment or not, exercisable for the purposes of the functions of the FIU, subject to any limitation specified in the designation.
26. **Clause 13** provides that any person designated by the FIU as an officer of Customs and Excise shall have the powers of an officer of Customs and Excise in the Island whether under any enactment or not, exercisable for the purposes of the functions of the FIU, subject to any limitation specified in the designation.
27. **Clause 14** requires a person designated by the FIU as a constable or officer of Customs and Excise to produce evidence of their designation upon request by a person in relation to whom they propose to exercise any power.

- 28. Clause 15** makes it an offence for any person to assault, restrict or obstruct a designated person in the exercise of their powers or a person assisting a designated person and an offence to impersonate a designated person or falsely to suggest that they are a designated person or have powers which exceed their designation. Subsection (3) provides that a person guilty of an offence under subsections (1), (2) or (3) shall be liable on summary conviction to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or both.
- 29. Clause 16** enables the DHA by order to amend any enactment to apply in relation to designated persons or the exercise of their powers, subject to consultation with Treasury (where such order relates to an enactment conferring a function on the Treasury in relation to tax, duty or import or export restrictions, or an officer of Customs and excise) and subject to Tynwald approval.
- 30. Clause 17** defines “designated person and “waters adjacent to the Island” which terms used in Part 3 of the Bill.
- 31. Clause 18** empowers and sets out the procedure for the FIU to gather additional information from an initial provider of information, a person who is identifiable from the information or a person who the FIU reasonably believe holds relevant information, where the FIU receives information from an initial provider and reasonably considers a request for additional information is necessary or expedient for the proper fulfilment of its functions. Additional information provided pursuant to a request made under subsection (1) may be, but does not have to be, information comprising a disclosure under the Proceeds of Crime Act 2008, the Anti-Terrorism and Crime Act 2003 or any other statutory provision described in regulations made under section 32. Information must be provided within such time and in such format as the FIU reasonably requires. Any information disclosed to the FIU is not admissible in evidence in criminal proceedings against the person providing the information or their employees other than in relation to an offence under clause 20 of the Bill. Subsection (7) provides that (subject to section 33) a disclosure under section 18 does not breach any obligation of confidence or any other restriction on disclosure (however imposed).
- 32. Clause 19** provides that a request for additional information is duly made if it is made reasonably, specifies the nature of the information sought, is made in writing and relates to one of the categories set out in subsection (2) that is; it relates to (i) information which may be obtained as a result of the application of the AML/CFT requirements (as defined in clause 21), information necessary to determine (ii) whether a person is a customer or beneficial owner in relation to a transaction or activity or (iii) the particulars of specified transactions or activities within a specified period. After having consulted with the FIU and its Board the DHA may by order, to be approved by Tynwald, amend the categories of information that may be requested.
- 33. Clause 20** creates certain offences in relation to a failure to comply with a request to provide additional information under section 18(4) or the making of a statement which the person knows is false or recklessly making a statement which is false, liable on summary conviction to custody not exceeding 2 years or a fine not exceeding £5,000 or both. Subsection (2) provides a defence for persons in respect of a failure to comply with a request under section 18(4) if the information requested was not in their possession or it was not reasonably practicable for the person to comply with the request. Subsections (6) and (7) provide for the liability of an officer of a corporate body as well as the body itself.

34. **Clause 21** defines "AML/CFT requirements", "beneficial owner", "business in the regulated sector", "customer" and "initial provider" which terms are used in Part 4 of the Bill.
35. **Clause 22** empowers the FIU to use information obtained in connection with the exercise of its functions in connection with the exercise of any of its other functions.
36. **Clause 23** empowers the FIU to disclose any information obtained in connection with the exercise of its functions for any purpose permitted in clause 28(1) of the Bill and (subject to clause 33 of the Bill) provides that such a disclosure does not breach certain obligations of confidence.
37. **Clause 24** provides for the disclosure of information to the FIU and (subject to clause 33 of the Bill) provides that such a disclosure does not breach certain obligations of confidence.
38. **Clause 25** imposes restrictions on the further disclosure of information on the recipient of any information disclosed by the FIU other than for a purpose connected with any function of that body, for the purposes for which the information was disclosed by the FIU, for any permitted purpose (which is defined in section 28(1)) or with the written consent of the FIU, which may be given in relation to a particular disclosure or in relation to specified circumstances.
39. **Clause 26** makes the failure to comply with the restriction on further disclosure of information disclosed by the FIU, by any person or an officer of a body corporate, (in the case of a body managed by its members) a member or members or a registered agent, an offence and punishable by custody not exceeding 2 years or a fine not exceeding £5,000 or both.
40. **Clause 27** empowers the DHA by order to amend any enactment relating to disclosure of information (other than the Data Protection Act 2002) to give better effect to Part 5 of the Bill, following consultation with the FIU, its Board and any other persons the DHA considers appropriate and subject to Tynwald approval.
41. **Clause 28** defines "permitted purposes" which term is used in Part 5 of the Bill as including the prevention, detection, investigation or prosecution of criminal offences, the prevention, detection or investigation of conduct for which penalties other than criminal penalties apply, the exercise of any function conferred on the FIU and the exercise of any function which appears to the DHA to be a function of a public nature and which it designates by order, having consulted with the FIU and its Board and which order must be laid before Tynwald as soon as practicable and if Tynwald resolves that the order is to be annulled it cease to have effect.
42. **Clause 29** provides for the institution of criminal proceedings by the Attorney General of offences or alleged offences relating to financial crime and that he must provide advice to such persons as he thinks appropriate in relation to a criminal investigation relating to financial crime or criminal proceedings resulting from such an investigation. "Criminal proceedings" and the circumstances in which proceedings for an offence are instituted are defined in subsection (3).
43. **Clause 30** imposes a duty upon the Chief Constable and Collector of Customs and Excise to pass information relating to crime or conduct in the Island, to the FIU which appears to be relevant to the exercise by the FIU of its functions.
44. **Clause 31** imposes a duty to assist the FIU in the exercise of its functions, upon any constable, any officer of Customs and Excise, the Income Tax Division of the Treasury and where applicable, each Department and Statutory Board. Subsections (4) and (5) provide that the categories of persons to whom the duty applies may be amended by

the DHA by order, subject to consultation with the FIU and its Board and to Tynwald approval.

- 45. Clause 32** provides that the DHA may make regulations in respect of any matter it considers necessary or expedient in order to give effect to the Act and may provide that their contravention will be an offence and prescribe penalties for such offences. Regulations may exempt a person from a provision of the Act, may permit a person to exercise a discretion in respect of any matters specified in the regulations, require compliance with standards or the adoption of recommended or specified practices and that regulations may contain incidental, transitional, supplementary provisions, including a power to amend the Act or any other enactment. The DHA must consult with the FIU and its Board regarding any regulations made under section 32 which must be approved by Tynwald.
- 46. Clause 33** provides that nothing in the Bill authorises a disclosure of personal data in breach of the Data Protection Act 2002.
- 47. Clause 34** provides for the cessation of the FCU and applies Schedule 2 to the Bill to the transfer of property, rights, liabilities and employees from the FCU to the FIU.
- 48. Clause 35** provides that any expenses of the FIU and DHA arising as a result of the Bill shall be paid out of money provided by Tynwald.
- 49. Clause 36** provides for the Acts specified in Schedule 3 to the Bill to be amended as set out in that schedule.

NOTES ON SCHEDULES

- 50. Schedule 1** is divided into 5 Parts which provide for —

Part 1 - FIU Proceedings; including (i) the exercise of functions by the Director in the name of the FIU, subject to directions given by the Board and any Code of Practice, (ii) incidental powers (to be exercised after consultation with the Board), (iii) the organisation of its work in accordance with the Director's directions, (iv) a requirement to provide an annual plan to the DHA, Board and any other persons the FIU considers appropriate, setting out priorities and targets for the forthcoming year and the financial resources expected to be available, such annual plans to be laid before Tynwald; and (v) a requirement for the FIU to issue an annual report on the exercise of the FIU's functions during the preceding year, including an assessment of the extent to which the annual plan was carried out. The annual report is to be published, copies sent to the DHA, the Board and any other persons the FIU considers appropriate and laid before Tynwald.

Part 2 - The Director; his appointment by the DHA, after consultation with the Board and Council of Ministers, on such terms and conditions as the DHA determines. The Director is an employee of the FIU. The Director has a duty to assist the Board in the exercise of its functions and to keep the Board informed of matters likely to be relevant to the exercise by the Board of its functions. The Director is authorised to delegate any of his functions (generally or specifically) to a member of staff of the FIU (other than in situations for which the Bill provides for a specific delegation).

Part 3 – FIU Board; unless amended by order of the DHA (which requires prior consultation with the Board and the Council of Ministers and the approval of Tynwald) the Board is to be comprised of the Attorney General, the Chief Constable and the Collector of Customs and Excise. The Director may attend meetings of the Board as an advisor. Section 21 of the Interpretation Act 1976 applies in relation to the

delegation of functions of the members of the Board. The Board is to have the functions given to it under the Bill, including (i) (after consultation with the Director and such other persons as the Board thinks appropriate) determining general policy and principles by reference to which the FIU is to exercise its functions and to give guidance and directions (ii) (after consultation with the Director and such other persons as the Board thinks appropriate) determining strategic priorities (iii) supervising and reviewing the exercise of functions by the Director; (iv) reviewing the efficiency of the use of resources by the FIU in exercising its functions and (v) considering and making recommendations and directions to the FIU resulting from any review the Board has carried out or report received by it from the Director. The general duty of the Board is to promote the efficiency and effectiveness of the FIU and to promote law enforcement.

Part 4 – Organisation and staffing of the FIU – The FIU may appoint employees and make arrangements for the secondment of persons to it to serve as members of staff. Employees of the FIU are employees of the Public Services Commission. Staff seconded to the FIU are to be treated as employees of the Public Services Commission and the FIU is to be treated as their stationed employer (for the purposes of the Public Services Commission Act 2015) for the duration of their secondment. Subject to prior consultation with the Public Services Commission and to approval from the DHA, employees of the FIU are to be employed on such terms and conditions (and with any other payments in respect of pensions, allowances or gratuities) as the Board determines. The police complaints procedure provided for in Schedule 1 of the Police Act 1993 shall continue to apply to any member of the police force seconded to the FIU and similarly the procedure for complaints against officers of Customs and Excise shall apply to any such officers whilst seconded to the FIU. Paragraph 16 sets out the treatment of other legislation in relation to a person who is designated as having the powers and privileges of a constable; and who was a constable immediately prior to becoming a member of staff of the FIU. The period of service with the FIU is to be treated as if it were service with the police force for the purposes of remuneration, pension contributions and rights.

Part 5 – Reports and Inspections; the DHA may require the Board to submit a report (in such form and by such person or body as is specified) on matters specified in the requirement, connected with the exercise of the FIU's functions or any of its activities. The DHA may publish or require the Board to publish any such report. In certain circumstances the DHA may exclude from publication any part of a report. Having first consulted with the Board, the DHA may arrange for inspectors to inspect the FIU generally or in relation to a specific matter and to report (in such form as the DHA directs) on the efficiency and effectiveness of the FIU. The Director, the FIU and its staff are under an obligation to assist inspectors and to provide any information required by inspectors. The DHA must publish every inspection report but may in certain circumstances exclude from publication any part of a report. A copy of the published report must be sent by the DHA to the FIU and its Board. In response the FIU must prepare comments and provide them to the DHA and Board. The DHA must publish the FIU's comments but may in certain circumstances exclude from publication any part of the comments. Where the conclusion of the report is that the FIU is not effective or efficient or will cease to be so unless specified measures are taken, the DHA may direct the FIU to undertake specified remedial measures with a specified timescale.

- 51. Schedule 2** - Contains provision for the DHA to make an order (subject to Tynwald approval) for the transfer of property, rights and liabilities from the FCU of the Isle of Man Constabulary to the FIU.

- 52. Schedule 3** – sets out the amendments to the Anti-Terrorism and Crime Act 2003, Personal Liability (Ministers, Members and Officers) Act 2007, Proceeds of Crime Act 2008 and Interpretation Act 2015, consequential upon the Bill.

FINANCIAL AND HUMAN RESOURCE IMPLICATIONS

- 53.** No additional costs have been identified, associated with the separation of the dedicated intelligence resources from the Financial Crime Unit of the Constabulary, which are not currently met from within existing budgets. A separate review will be undertaken once the FIU has been established to determine the extent to which international expectations and standards are being and can continue to be met.

EUROPEAN CONVENTION ON HUMAN RIGHTS (“the Convention”)

- 54.** 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 Financial Intelligence Unit Bill 2015 are compatible with the Convention rights.