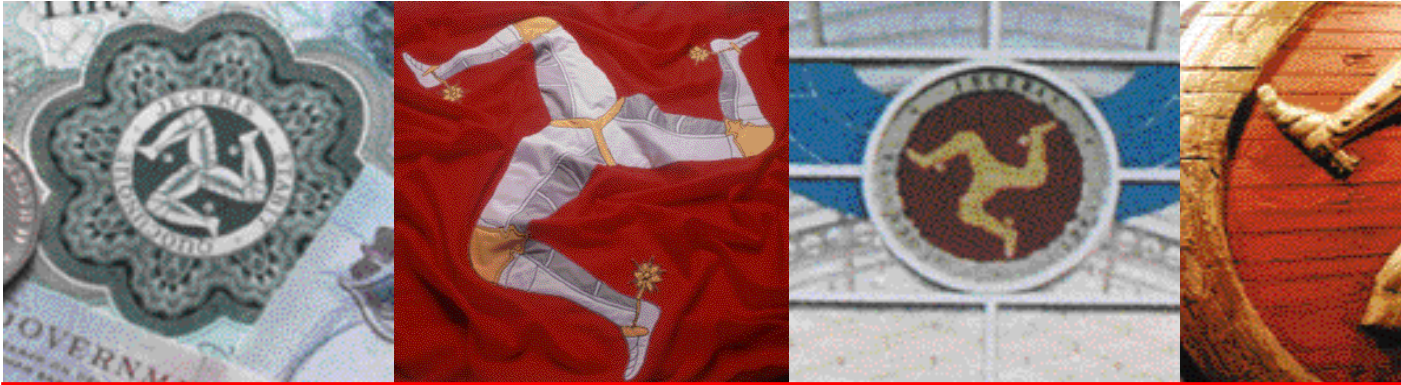




Isle of Man
Government

Reilrys Ellan Vannin



The Financial Intelligence Unit Bill 2015

Consultation Responses

Cabinet Office
Oik Coonceil ny Shirveishee

September 2015

Financial Intelligence Unit Bill 2015

Summary of Consultation Exercise

1. Executive Summary

The consultation paper sought opinion on the proposed establishment of an independent Financial Intelligence Unit (FIU), with enhanced information gathering powers. The three key proposals proposed in the consultation paper and to be addressed in the proposed legislation are:

- The creation of an independent FIU, as a body corporate;
- The separation of the information gathering work concerning the proceeds of crime or financing of terrorism from the criminal investigations unit; and
- The increase of the FIO's information gathering powers in line with other international jurisdictions.

2. The Consultation

The consultation document, which included an Executive Summary, background information and questions for interested parties was published on 7 August 2015. The consultation process closed on 18 September 2015.

The document was circulated as follows:-

By email (with hyperlink to the document) to the following interested bodies or persons involved or interested in information gathering in connection with proceeds of crime or the financing of terrorism:- Tynwald Members

Attorney General

Local Authorities

Chief Officers

Chamber of Commerce

Law Society

The consultation document was also published on the Isle of Man Government's website and copies were available in the Tynwald Library and the Cabinet Office.

3. The Responses

A total of 11 written responses to the consultation were received before the closing date, from the following (in alphabetical order):

1. AXA Isle of Man ("AXA");

2. Barclays Bank Plc ("Barclays");
3. CMI Insurance Co. Limited ("CMI");
4. Department of Infrastructure ("DOI");
5. Dougherty Quinn, Advocates ("DQ");
6. Isle of Man Chamber of Commerce ("Chamber");
7. Lloyds Bank International Limited ("Lloyds");
8. Ramsey Town Commissioners ("RTC");
9. RBS International ("RBSI");
10. a confidential response ("10th response"); and
11. a confidential response ("11th response").

The responses included comments on:-

Policy – comments on substantive policy issues; and clarification and drafting comments.

A summary of the responses and the feedback for each (other than about editorial comments and minor corrections with no implication for meaning) is in Appendix 1.

The Impact Assessment is in Appendix 3.

4. Comments and next steps

The Cabinet Office is grateful to all those who responded to the consultation exercise. All comments have been given careful consideration but, as the consultation document made clear, there is no guarantee that changes will be made to what has been proposed as a result of any particular comment. The purpose of consultation was not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision.

A tracked amended redraft of the Bill in the light of the responses and feedback is in Appendix 4. The Bill will be finalised and progressed for submission to the Council of Ministers.

For consideration by the Keys and Legislative Council, the Bill will need to be accepted onto the legislative timetable. A paper has been drafted and a request for leave to introduce the Bill is expected to be put before the Council of Ministers during the week commencing 2 November 2015.

If anyone wishes to submit further comments on either the policy or the draft Bill they will be accepted and held on file for consideration when the Bill is progressed.

The consultation document will continue to be available in the “Closed consultations and summaries” section of the Consultations page on the Isle of Man Government website at <https://www.gov.im/consultations.gov>.

Cabinet Office

Date: 28 October 2015

APPENDIX 1**Summary of the responses and feedback**

Questions**1. Do you believe the FIU unit should be put on a statutory footing with its own governance arrangements?**

| | | |
|------|---------------------------|--|
| 1.1 | AXA | Agree |
| 1.2 | Barclays | Agree |
| 1.3 | CMI | Agree |
| 1.4 | Chamber | See actual consultation response in Appendix 2 |
| 1.5 | DOI | Agree |
| 1.6 | DQ | Agree |
| 1.7 | Lloyds | Agree |
| 1.8 | RTC | Agree |
| 1.9 | RBSI | Agree |
| 1.10 | 10 th response | Agree |

General comment:

- (1) please provide Impact Assessment;
- (2) other than as ability to gather additional information, resourcing and an ability to expedite future statutory changes, identify how the powers or restrictions in the Bill differ from existing legislation; and
- (3) query inconsistency between principles of openness and transparency and the proposed abilities to make statutory amendments without wide consultation.

Cabinet Office Feedback:

- (1) Impact Assessment included in Appendix 3;
- (2) Please refer to the consultation document for a general summary of the effects of the Bill; and
- (3) Any proposed order would need to be introduced to the Council of Ministers which may direct wider consultation where it considers it necessary or appropriate. The parties listed as consultees in the relevant sections of the Bill are mandatory. The FIU may choose or be required by the Council of Ministers to consult with others.

1.11 11th response Agree

2. What do you agree or disagree with the benefits of creating the new statutory FIU? If you disagree please express your reasoning for consideration

2.1 AXA Agree

2.2 Barclays "no comment"

2.3 CMI Agree

2.4 Chamber See actual consultation response in Appendix 2

2.5 DOI Agree

2.6 DQ Agree

2.7 Lloyds Agree

2.8 RTC Agree

2.9 RBSI Agree

2.10 10th response Agree - although believe that the existing FCU is already functional and effective.

2.11 11th response Agree

3. Do you agree or disagree that the proposed provisions of the FIU Bill will provide the necessary powers to the FIU as to information

gathering and sharing to carry out its full role in the international arena?

- 3.1 AXA Agree
- 3.2 Barclays (1) Query the need/appropriateness of the FIU as an information gathering body (not engaged in criminal investigations) to be able to request the Attorney General to commence criminal proceedings (clause 6(1)(a)). To do so would be more appropriate in relation to its information gathering powers in Part 4 of the Bill.
- (2) Cannot see the rationale for Part 3 of the Bill and in particular the ability to designate staff as having the powers of a constable. Suggest empowering FIU to staff to question or limiting the applicable powers of a constable to those only involving gathering financial intelligence. Reference made to the lack of oversight of any FIU staff designated as having the powers of a constable, by the Police Complaints Commissioner.
- (3) Concern expressed at the lack of judicial oversight for Part 4 powers with particular reference to the current need for a court order before being compelled to produce such information. Concern expressed in relation to the potential increase in workload and speculative enquiries.
- Suggested need for the Bill to include a specific right to petition a court for relief where the recipient of a demand feels the powers are being exercised unlawfully.

Cabinet Office Feedback:

- (1) The amended draft Bill (Appendix 4) addresses the above Barclays' issues, as follows:-

Clause 6(1)(a) now refers to the FIU being able to request the Attorney General to recommend an investigation, rather than to institute proceedings; and

Clause 11(1) has been amended so as to refer specifically to "*For the purposes of discharging its functions*".

- (2) Designated persons will be subject to the usual disciplinary procedures which apply to public sector employees.
- (3) The Bill is consistent with the procedure in Jersey. A recipient who believed that a request had been made unlawfully could pursue a petition of doléance.

| | | |
|-----|---------|---|
| 3.3 | CMI | Agree |
| 3.4 | Chamber | See actual consultation response in Appendix 2 |
| 3.5 | DOI | Agree |
| 3.6 | DQ | Agree subject to an assurance that the additional information gathering powers in the Bill are not used in place of other statutory information gathering powers for which the Attorney General's consent is required |

Cabinet Office Feedback: The Attorney General will be a member of the FIU Board and so will be involved in the exercise of all FIU powers.

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|------|---------------------------|--|
| 3.7 | Lloyds | Agree |
| 3.8 | RBSI | Agree |
| 3.9 | RTC | Agree |
| 3.10 | 10 th response | Query whether or not the proposed powers are too wide, how is reasonable to be defined and whether existing requirements regarding requests from external agencies and their need to justify requests, will be maintained. |

Cabinet Office Feedback: There is caselaw on the subject of what is "reasonable". In addition, any conduct of a public body deemed to be unreasonable may be challenged by way of a petition of doléance.

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|------|---------------------------|---|
| 3.11 | 11 th response | Clarification sought as to how the Department of Home Affairs envisages that the power in section 18(1) will be exercised in practice and whether any measures will be put in place to ensure anonymity of the initial provider in all cases. |
|------|---------------------------|---|

Cabinet Office feedback: Any information provided by the initial provider will be provided subject to the provisions of the relevant statute, Code etc pursuant to which the initial provider is required to make the disclosure. The Bill does not include any provision as to safeguarding the anonymity of an initial provider.

4. Are there any additional powers you feel the proposed separate FIU should have?

4.1 AXA A continuation and extension of the role of the existing FCU in relation to awareness training on fraud and money laundering

Cabinet Office Feedback: Clause 6(1)(f) has been added to the Amended Bill which says the FIU may "*provide or assist with the provision of awareness training in relation to financial crime*".

4.2 Barclays FIU should have the power but not the duty to share information in its possession with businesses in the regulated sector.

Cabinet Office Feedback: The reference to information sharing within the FIU's general functions (clause 5(1)(a), does not mean that it is a duty. Clause 7(1) "Powers of FIU as to information relating to financial crime" says that the FIU **may** share information with the persons listed in paragraphs (a) to (e) and clause 23 "Disclosure of information by FIU" also states at subsection (1). It is already expressed as a power, not a duty.

4.3 CMI No

4.4 Chamber See actual consultation response in Appendix 2

4.5 DOI No

4.6 DQ No

General comment: (1) suggestion that the definition of financial crime in Part 3 of the Bill should refer to the IOM Bribery Act 2013, giving a role to the FIU in relation to that Act for which there is no current investigatory or enforcement body; (2) query regarding the requirement to consult with only the FIU and Board before varying certain matters. Suggestion that consultation in relation to s3(3), s19(3) and 27(3) should be wider; (3) query whether the intention of s25 of the Bill is that further

disclosure of information is prohibited e.g. within the group companies or a firm.

Cabinet Office Feedback:

- (1) The FIU is intended to be an information gathering, not an investigative or enforcement body and as such, to give it such powers in relation to offences under the Bribery Act 2013, would be inappropriate. The Isle of Man Constabulary performs the investigative and enforcement role for bribery offences.
- (2) Please see the Cabinet Office Feedback at point 1.6(3) above.
- (3) Such further disclosure, even internally, is intended to be covered by the restriction. An affected person may seek consent from the FIU for such an 'internal' disclosure under section 25(1)(b).

4.7 Lloyds No

General comment: query regarding the wide scope of the information sharing power in clause 7(1)(e). Suggested limiting the power by reference to the definition of "permitted purpose" defined later in the Bill.

Cabinet Office Feedback: Clause 7(2) limits the information sharing ability in 7(1) by reference to clauses 23 and 25. Clause 23(1) clarifies that disclosure can only be in relation to "permitted purposes" as defined in clause 28(1).

4.8 RBSI Agree

General comment: re: clause 14 – how will designated officers identify and distinguish themselves as such?

Cabinet Office Feedback: clause 14 has been amended. More detail than this is generally not included in the primary legislation¹, the form of identification being an operational matter for the FIU.

4.9 RTC No

4.10 10th response(1) Please see comments made in relation to the

¹ For example - section 35 of the Local Government Act 1985 which is incorporated into many statutes provides; "(3) A person empowered to enter on land under subsection (2) – (a) shall, if so required before or after entering on the land, produce evidence of his authority to enter;". In practice a form of identification will be issued and carried by every designated person. Section 39 of the Water Act 1991 again provides "(2) A person empowered to enter any premises under subsection (1) – shall, if so required before or after entering the premises, produce if so required evidence of his authority to enter;".

other questions. General comment: will a move from FCU to FIU have any real effect. What happens to any existing functions of the FCU which are not to be transferred to the FIU? (2) Clauses 14(1) and 14(2) seem contradictory. A time limit of a week is suggested for the purposes of clause 14(2).

Cabinet Office Feedback:

- (1) Please refer to the Impact Assessment and Consultation document.
- (2) Within the amended draft Bill clause 14(2) has been deleted.

4.11 11th response No - subject to clarification requested to question 3.

APPENDIX 2



Consultation on the Proposed Establishment of a separate Financial Intelligence Unit for the Isle of Man

Without a full and proper impact assessment it is not possible to offer a considered opinion of establishing a separate body corporate FIU.

The reason given for establishing a separate FIU appears to be broadly based on the fact Jersey has done it and MONEYVAL will want it so it must be the right thing to do. However, section B3 of the consultation paper states the FCU has twice been subject to inspection by IMF and found to be 'effective and largely compliant with international standards'.

Upon inquiring further, Chamber was informed 'other than a change in reporting line for the FIU there are no other impacts'. As to the potential cost factors, the following was received 'The new FIU will be based on a board structure but will be an internal board with the members being the Chief Constable, the AG and the Collector of Customs and Excise, so there will be no extra costs as there would normally be when setting up a new board.'

If this is truly the case why is Article 10(5) in the Bill.

There is no objective assessment as to what is best for the Isle of Man (what are the risks of doing it and what are the risks of not doing it) as might be expected in a genuine consultation. We expect this Bill will proceed as it is regardless of any submissions to this consultation.

Isle of Man Chamber of Commerce
11 September 2015

APPENDIX 3**Impact Assessment**

| | | |
|--|---------------------|--------------------------------|
| DEPARTMENT: Cabinet Office | | |
| IMPACT ASSESSMENT OF: FIU | | |
| Stage: Printing of the Bill | Version: 1.0 | Date: 22 October 2015 |
| Related Publications: | | |
| Responsible Officer: Yvette Mellor | | |
| Email Address: yvette.mellor@gov.im | | Telephone: 01624 686368 |

| |
|--|
| SUMMARY: INTERVENTION AND OPTIONS |
| <p>Briefly summarise the proposal's purpose and the intended effects</p> <p>This Bill has been drafted in response to the need to ensure that the Isle of Man focuses sufficiently on proactively using intelligence material to prevent and detect financially motivated crime. It provides for the Financial Intelligence Unit (the FIU) to be created with a separate and distinct legal personality outside of the Isle of Man Constabulary.</p> <p>The FIU will have the functions and powers in relation to gathering and passing on intelligence that were previously held by officers of the combined financial crime unit of the Constabulary. An additional power to request further information is required and has been included in the Bill.</p> <p>The separation provides an appropriate level of autonomy from government so that the unit can focus on intelligence work and will not be distracted or re-deployed to operational investigation or detection work. Work on investigation or detection of crime will remain under the responsibility and control of the Chief Constable.</p> <p>The FIU will report through the Director to the Board of the FIU (the Board) which is made up of the Attorney General, the Chief Constable and the Collector of Customs and Excise. The constitution of the Board may be varied, following consultation with the Board and the Council of Ministers, by DHA order which must be approved by Tynwald before it comes into effect.</p> <p>The DHA may issue codes of practice relating to the functions of the FIU.</p> <p>A separate review is proposed which will identify whether the Isle of Man needs to deploy or re-deploy further resources to the FIU in order to meet international expectations.</p> |
| <p>What are the options that have been considered [Note A]</p> <p>Four models for the structure and constitution of the FIU were considered: -</p> <p>(a) Judicial model – sits with the judicial branch of government and works alongside existing law enforcement agencies</p> |

- (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.** However nowhere in the world is there an FIU which is similar to the current Isle of Man FCU, in that the responsibility for financial intelligence and the investigation of serious fraud and complex fraud are found in the same body.
- (c) **Administrative model** – a centralised, independent administrative body that receives and disseminates information to existing law enforcement agencies.
- (d) **Hybrid model**- combines at least two other models.

Link to Government Strategic Plan

The Government's relevant published strategic level documents are -

1. **Commitment to Combating Money Laundering and the Financing of Terrorism & Proliferation which was published in June 2012 and**
2. The updated **Agenda for Change** which contains a linked outcome which says 'We have constructive, well respected relationships with the UK and our international partners'. It goes on to promote measures that the work of the FIU will directly impact upon as follows -
 - Adherence to international standards;
 - meeting relevant sanctions and UN conventions;
 - delivery of National Risk Assessment and Action Plan;
 - successful evaluation of MONEYVAL in 2016.

Responsible Departmental Member

Not applicable

Ministerial sign off

I have read the Impact Assessment and I am satisfied that the balance between the benefit and any costs is the right one in the circumstances.

Signed by the Responsible Minister

..... Date:

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| SUMMARY: ANALYSIS AND EVIDENCE |
| IMPACT OF PROPOSAL |
| Resource Issues - Financial (including manpower) |
| <p>Statement</p> <p>No additional costs, which are not currently met from within existing budgets, associated with the separation of the dedicated intelligence resources from the Financial Crime Unit of the Constabulary, have been identified. 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.</p> <p>The existing arrangements of seconding officers from the Constabulary and Customs and Excise Division of Treasury may continue under the proposed legislation, should that be appropriate.</p> <p>Provision is made to permit the transfer of assets that are relevant to the work of the FIU should that prove necessary.</p> |
| <p>If the proposal introduces provisions that will require another Department, Board, Office or Body to take on additional work or responsibility please ensure that they have been consulted with early on in your considerations. Please provide a brief statement as to who they are and the consultation that has taken place.</p> <p>All affected areas of Government have been included in discussion and consultation to identify the best way to establish a separate FIU. The Serious Crime Strategic Board, whose members are the Acting Attorney General, the Chief Constable, the Chief Secretary, the Collector of Customs and Excise has considered and agreed this proposed solution.</p> |
| <p>Are there any costs or benefits that are not financial i.e. social ?</p> <p>There are indirect economic benefits to being assessed as being compliant with international standards in relation to effectiveness of intelligence gathering activity, particularly in relation to money laundering and terrorist related activity.</p> <p>There are indirect social benefits of ensuring that intelligence gathering activity is effective in being a deterrent to international criminals.</p> |
| <p>Which Business sectors/organisations will be impacted, if any, and has any direct consultation taken place?</p> <p>A public consultation was carried out on the draft Bill and was open for submissions between 7 August 2015 and 18 September 2015. It was publicised through the Isle of Man Government Consultations website.</p> |

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| <p>Does the proposal comply with privacy law? Please provide a brief statement as to any issue of privacy or security of personal information.</p> <p>This Bill does not present any new issues in this regard.</p> |
| <p>Has Treasury Concurrence been given for the preferred option</p> <p>Treasury Concurrence is not required.</p> |
| <p>Approximate date for legislation to be implemented if known</p> <p>Subject to successful passage through the Branches of the Legislature, it is proposed to transition to the separate FIU as soon as possible and it is further proposed to enact the provisions of the Bill with effect from the first quarter of 2017.</p> |

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|--|
| <p>SUMMARY: CONSULTATION</p> |
| <p>Consultation in line with Government standard consultation process Yes/No</p> |
| <p>Date</p> <p>1st Consultation 7 August 2015</p> |
| <p>Summary of Responses:</p> <p>A total of 11 written responses to the consultation were received within the time limit from the following (in alphabetical order):</p> <ol style="list-style-type: none"> 1. AXA Isle of Man ("AXA"); 2. Barclays Bank Plc ("Barclays"); 3. CMI Insurance Co. Limited ("CMI") 4. Department of Infrastructure ("DOI") 5. Dougherty Quinn, Advocates ("DQ") 6. Isle of Man Chamber of Commerce ("Chamber"); 7. Lloyds Bank International Limited ("Lloyds"); 8. Ramsey Town Commissioners ("RTC") 9. RBS International ("RBSI"); 10. Two further confidential responses. <p>A summary report has been prepared and published.</p> <p>Four further submissions were received after the consultation closed.</p> |

APPENDIX 4**Redrafted Financial Intelligence Unit Bill 2015 – Version 02****FINANCIAL INTELLIGENCE UNIT BILL 2015****Explanatory Memorandum**

This Bill is promoted by the Cabinet Office.

Clauses 1-3 deal with the short title of the resulting Act, its commencement and the interpretation of certain terms used in it.

Clause 4 establishes the Financial Intelligence Unit (“FIU”) as a body corporate and enables the application of provisions of the Statutory Boards Act 1987 by order of the Department of Home Affairs (“DHA”). Reference is made to the provisions of Schedule 1 to the Bill which contains provision about the constitution, functions, Director, Board and staff of the FIU and other matters related to it.

Clause 5 sets out the general functions of the FIU.

Clause 6 sets out the general powers of the FIU.

Clause 7 sets out the powers of the FIU in relation to sharing information relating to financial crime within its possession and control.

Clause 8 makes provision for the general operation control of the FIU to be carried out in accordance with paragraph 1 of Schedule 1 to the Bill and provides that the staff of the FIU and any officer serving with the FIU are under the control and direction of the FIU.

Clause 9 provides that the DHA may issue codes of practice relating to the exercise by the FIU of its functions.

Clause 10 defines certain terms used in Part 2 of the Bill and further provides that the DHA may amend the definitions in clause 10(1) of the Bill by order to be approved by Tynwald.

Clause 11 enables the FIU to designate members of its staff as having the powers of a constable or an officer of Customs and Excise for a limited or unlimited period and subject to any limitations contained in the designation.

Clause 12 sets out in more particular detail the powers and privileges exercisable for the purposes of the functions of the FIU by any person designated by the FIU as a constable.

Clause 13 sets out in more particular detail the powers exercisable for the purposes of the functions of the FIU by any person designated by the FIU as an officer of Customs and Excise.

Clause 14 sets out the circumstances in which a person designated by the FIU as a constable or officer of Customs and Excise must produce evidence of their designation.

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 sets out the penalties for such offences.

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 Tynwald approval.

Clause 17 sets out various defined terms used in Part 3 of the Bill.

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. Any information disclosed 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.

Clause 19 sets out the criteria for the FIU making a request for additional information pursuant to clause 18(4) of the Bill ("a Request") and the categories of information that may be requested. 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.

Clause 20 makes certain offences in relation to a failure to comply with a Request, the obstruction of a person from complying with a Request and the making of a statement to the FIU which contains materially false information and sets out the penalties for such offences.

Clause 21 defines certain terms used in Part 4 of the Bill.

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.

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.

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.

Clause 25 imposes restrictions on the further disclosure of information on the recipient of any information disclosed by the FIU other than in certain circumstances, one of which being with the written consent of the FIU.

Clause 26 makes the failure to comply with clause 25 of the Bill by any person or an officer of a body corporate, an offence and sets out the penalties for such offences.

Clause 27 empowers the DHA to amend any enactment (other than the Data Protection Act 2002) by order subject to Tynwald approval.

Clause 28 defines certain terms used in Part 5 of the Bill.

Clause 29 sets out the procedure for the prosecution by the Attorney General of offences or alleged offences relating to financial crime.

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.

Clause 31 imposes a duty to assist the FIU in the exercise of its functions, upon certain specified persons. The list of persons to whom the duty applies may be amended by the DHA by order, subject to Tynwald approval.

Clause 32 provides that the DHA may make regulations and sets out the matter for which such regulations may provide, subject to Tynwald approval.

Clause 33 provides that nothing in the Bill authorises a disclosure of personal data in breach of the Data Protection Act 2002.

Clause 34 provides for the cessation of the organisation known as the Financial Crime Unit ("FCU") and applies Schedule 2 to the Bill to the transfer of property, rights, liabilities and employees from the FCU to the FIU.

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.

Clause 36 provides for the Acts specified in Schedule 3 to the Bill to be amended as set out in that schedule.

No additional costs, which are not currently met from within existing budgets, associated with the separation of the dedicated intelligence resources from the Financial Crime Unit of the Constabulary, have been identified. 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.

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.

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FINANCIAL INTELLIGENCE UNIT BILL 2015

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C

FINANCIAL INTELLIGENCE UNIT BILL 2015

A **BILL** to establish a Financial Intelligence Unit; to confer functions on it; 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:—

PART 1 — INTRODUCTORY

Short title

The short title of this Act is the Financial Intelligence Unit Act 2015.

Commencement

This Act, except section 0 and this section, comes into operation on such day or days as the Department of Home Affairs (“DHA”) may by order appoint.

An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the DHA to be necessary or expedient.

Interpretation

In this Act —

“**Board**” means the FIU Board appointed under Schedule 1;

“**DHA**” means the Department of Home Affairs;

“**Director**” means the Director of the FIU appointed under Schedule 1;

“**financial crime**” includes —

- (a) money laundering;
- (b) terrorist financing and proliferation; and
- (c) other crime which the Board, with the agreement of the DHA, considers to be financial crime for the purposes of this Act;

“**FIU**” means the Financial Intelligence Unit;

“**financial year**”, in relation to the FIU, means —

- (a) the period beginning with the date on which the FIU is established and ending with the following 31st March; and
- (b) each successive period of 12 months ending with 31st March; and

“**the police force**” means the Isle of Man Constabulary.

For the purposes of this Act —

- (a) crime includes alleged crime; and
- (b) detecting crime includes —
 - (i) considering whether any crime or alleged crime has been committed;
 - (ii) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed; and
 - (iii) the apprehension of the person by whom any crime was committed,

and any reference to preventing or detecting crime is to be construed accordingly.

The DHA may by order amend the definition of financial crime in subsection (1).

Before it makes an order under subsection (3), the DHA must consult the FIU and the Board.

An order under subsection (3) must not come into operation unless it is approved by Tynwald.

PART 2 — FINANCIAL INTELLIGENCE UNIT

Establishment of Financial Intelligence Unit

The Financial Intelligence Unit (“**FIU**”) is established as a body corporate.

Schedule 1, which makes provision about the constitution, functions, Director, Board and staff of the FIU and other matters relating to it, has effect.

The *Statutory Boards Act 1987* applies to the FIU to such extent as may be specified in an order made by the DHA (but not otherwise).

Before it makes an order under subsection (3), the DHA must consult the FIU and the Board.

An order under subsection (3) must not come into operation unless it is approved by Tynwald.

FIU's general functions

The FIU has the functions of –

- (a) receiving, gathering, analysing, storing and sharing information about financial crime (whether in the Island or elsewhere);
- (b) ~~preventing~~assisting with the prevention and ~~detecting~~detection of crime, and in particular, financial crime (whether in the Island or elsewhere);
- (c) cooperating with law enforcement agencies (see section 0); and
- (d) contributing to the reduction of crime, and in particular, financial crime and to the mitigation of its consequences.

The FIU also has such other functions as are conferred on it under this Act (including regulations made under section 0) or under any other statutory provision.

FIU's general powers

P2005/15/5

The FIU may in pursuance of any of its functions –

- (a) request the Attorney General to ~~institute criminal proceedings~~in~~recommend to~~ the ~~Island~~appropriate person that an investigation is carried out concerning an offence or alleged offence in relation to financial crime;
- (b) at the request of the Chief Constable, act in support of any activities of the police force;
- (c) at the request of the chief officer of any police force or constabulary outside the Island, act in support of any activities of that force or constabulary;
- (d) at the request of any law enforcement agency (see section 0), act in support of any activities of that agency; ~~and~~
- (e) enter into other arrangements for co-operating with bodies or persons (in the Island or elsewhere); ~~); and~~
- (f) provide or assist with the provision of awareness training in relation to financial crime.

The "appropriate person" for the purposes of section 6(1)(b) means –

- (a) the Collector of Customs and Excise in relation to an offence or alleged offence under "the customs and excise Acts" as defined in section 184 of the Customs and Excise Management Act 1986; or
- (b) in any other case, the Chief Constable.

The FIU also has such other powers as are conferred on it under this Act (including regulations made under section 0) or under any other statutory provision.

The FIU may, in respect of any matter in connection with any of its functions, furnish such assistance as it considers appropriate in response to requests made by any government or other body exercising functions of a public nature in any country or territory outside the Island.

Powers of FIU as to information relating to financial crime

P2005/15/3

The FIU may share information in its possession or control relating to financial crime ~~to~~with —

- (a) the police force;
- (b) any other police force or constabulary outside the Island;
- (c) the Collector of Customs and Excise;
- (d) law enforcement agencies (see section 0); or
- (e) such other persons (in the Island or elsewhere) as it considers appropriate in connection with any of its functions.

Subsection (1) is subject to sections 0 (disclosure of information by FIU) and 0 (restrictions on further disclosure).

Operational control

General operational control in relation to the activities carried out in the exercise of the FIU's functions is to be undertaken in accordance with paragraph 1 of Schedule 1.

Every member of staff of the FIU, including each officer (permanent or temporary) serving (whether as employee, secondee or otherwise) with the FIU, is under the direction and control of the FIU.

This section does not affect the generality of paragraph 1 of Schedule 1.

Codes of practice

P2005/15/10

The DHA may issue codes of practice relating to the exercise by the FIU of any of its functions.

Before issuing a code of practice the DHA must consult the FIU and the Board and may consult such other persons as it considers appropriate.

Codes of practice under this section must be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which a code is laid or at the next following sitting resolves that it is to be annulled, it ceases to have effect.

Interpretation of Part 2

In this Part —

“**assigned matters**” has the meaning given by section 184(1) of the *Customs and Excise Management Act 1986*;

“**law enforcement agency**” means —

- (a) in respect of assigned matters and revenue matters, the Treasury;
- (b) the Isle of Man Financial Services Authority;
- (c) the Isle of Man Gambling Supervision Commission;
- (d) in relation to matters of consumer protection and trading standards, the Isle of Man Office of Fair Trading;
- (e) any other person who is charged with the duty of investigating offences or charging offenders; and
- (f) any other person who is engaged outside the Island in the carrying on of activities similar to any carried on by the FIU, the police force, the Collector of Customs and Excise or a law enforcement agency mentioned in paragraphs (a) to (e); and

“**revenue matters**” includes matters of direct taxation or indirect taxation and further includes mutual assistance work undertaken by —

- (a) the Collector of Customs and Excise (including cooperation in relation to value added tax and customs and excise matters); and
- (b) the Income Tax Division of the Treasury (including cooperation in relation to tax information exchange matters).

The DHA may by order amend a definition in subsection (1).

Before it makes an order under subsection (2), the DHA must consult the FIU and the Board.

An order under subsection (2) must not come into operation unless it is approved by Tynwald.

PART 3 — SPECIAL POWERS OF DESIGNATED FIU STAFF

Designation of FIU staff as persons having powers of constable etc

P2005/15/43

The For the purposes of discharging its functions the FIU may designate members of the staff of the FIU as one or more of the following —

- (a) a person having the powers of a constable;
- (b) a person having the powers of an officer of Customs and Excise.

A designation under subsection (1) —

- (a) may be made subject to any limitations specified in the designation (whether as to the powers exercisable by virtue of it, the purposes for which they are exercisable or otherwise); and
- (b) has effect either for a period so specified or without limit of time.

Subsection (2) applies subject to any modification or withdrawal of the designation by the FIU.

A member of the staff of the FIU may be designated as a person having any of the powers mentioned in subsection (1) whether or not that member —

- (a) already has (for any reason) any powers falling within that subsection; or
- (b) had any such powers before becoming a member of staff of the FIU.

But a person must not be designated as a person having any of the powers mentioned in subsection (1) unless the FIU is satisfied that that person—

- (a) is capable of effectively exercising the powers that would be exercisable by virtue of the designation;
- (b) has received adequate training in respect of the exercise of those powers; and
- (c) is otherwise a suitable person to exercise those powers.

Where a member of staff of the FIU —

- (a) before becoming such a member, held an office by virtue of which that person had any powers falling within subsection (1); and
- (b) has not resigned that office,

the powers and duties of that office are to be treated as suspended so long as that person remains a member of staff of the FIU, and revive if (and only if) on ceasing to be a member of staff of the FIU the person returns to service as the holder of that office.

References in this section to the powers of a constable or the powers of an officer of Customs and Excise are to be read and construed in accordance with the following provisions of this Part.

Person having powers of a constable

P2005/15/46

This section applies to a member of the staff of the FIU who is for the time being designated under section 0 as a person having the powers of a constable.

The designated person has all the powers and privileges of a constable in the Island.

If any of those powers and privileges, when exercisable by a constable, are exercisable elsewhere than in the Island or the waters adjacent to the Island, they are similarly exercisable by the designated person.

The designated person also has any powers exercisable by virtue of subsection (5).

Any enactment under which a constable may be authorised by warrant to exercise any power in relation to any matter has effect, for the purpose of

enabling the designated person to be authorised to exercise the power in relation to any such matter, as if the designated person were a constable.

Subsections (2) to (5) have effect subject to any limitation specified in the designation in accordance with section 0.

In this section references to the powers and privileges of a constable are references to the powers and privileges of a constable whether under any enactment or otherwise.

Person having powers of officer of customs and excise

P2005/15/48

This section applies to a member of the staff of the FIU who is for the time being designated under section 0 as a person having the powers of an officer of Customs and Excise.

The designated person has the same powers as an officer of Customs and Excise.

If any of those powers ~~and privileges~~, when exercisable by an officer of Customs and Excise, are exercisable elsewhere than in the Island or the waters adjacent to the Island, they are similarly exercisable by the designated person.

The designated person also has any powers exercisable by virtue of subsection (5).

Any enactment under which an officer of Customs and Excise may be authorised by warrant to exercise any power in relation to any customs matter has effect, for the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if the designated person were an officer of Customs and Excise.

Subsections (2) to (5) have effect subject to any limitation specified in the designation in accordance with section 0.

In this section references to the powers of an officer of Customs and Excise are references to the powers of an officer of Customs and Excise whether under any enactment or otherwise.

Evidence of designation

P2005/15/50(1) ~~and (2)~~

If a designated person —

- (a) exercises any power in relation to another person in reliance on the designation under section 0; ~~or~~ 11(1); or
- (b) purports to do so,

that designated person must produce evidence of designation to the other person if requested to do so.

~~Failure to comply with subsection (1) does not make the exercise of the power invalid.~~

Assaults, obstruction or deception in connection with designated persons

P2005/15/51

A person commits an offence if that person assaults —

- (a) a designated person acting in the exercise of a relevant power; or
- (b) a person who is assisting a designated person in the exercise of such a power.

A person commits an offence if that person resists or wilfully obstructs —

- (a) a designated person acting in the exercise of a relevant power; or
- (b) a person who is assisting a designated person in the exercise of such a power.

A person commits an offence if, with intent to deceive, that person —

- (a) impersonates a designated person;
- (b) makes any statement or does any act calculated falsely to suggest that the person is a designated person; or
- (c) makes any statement or does any act calculated falsely to suggest that the person has powers as a designated person that exceed the powers the person actually has.

A person guilty of an offence under subsection (1), (2) or (3) is liable on summary conviction —

- (a) to custody for a term not exceeding 6 months; or
 - (b) to a fine not exceeding £5,000,
- or to both.

In this section “**relevant power**”, in relation to a designated person, means a power or privilege exercisable by that person by virtue of the designation under section 11(1).

Modification of enactments: designated persons

P2005/15/52

The DHA may by order provide for any enactment (or description of enactments) to apply in relation to —

- (a) designated persons; or
 - (b) the exercise of powers by such persons,
- with such modifications as it considers necessary or expedient.

An order under this section may include provision for or in connection with —

- (a) extending to such persons any exemption or protection afforded by an enactment to any other description of persons;

- (b) providing for the disclosure of information to, or the doing of other things in relation to, such persons under any enactment;
- (c) conferring on the Director functions exercisable in relation to such persons.

Subsection (2) does not affect the generality of subsection (1).

In this section any reference to designated persons includes a reference to any description of such persons.

Before exercising the power conferred by subsection (1) in relation to an enactment which (expressly or otherwise) confers any function on —

- (a) the Treasury in respect of any tax, duty or import or export restriction; or
 - (b) an officer of Customs and Excise,
- the DHA must consult the Treasury.

An order under this section must not come into operation unless it is approved by Tynwald.

Interpretation of Part 3

P2005/15/54

In this Part —

“**designated person**” means a person for the time being designated under section 11; and

“**waters adjacent to the Island**” means the sea and other waters within the seaward limits of the Island’s territorial sea.

Any reference in this Part to the exercise of powers by virtue of a designation under section 11(1) is, in a case where any limitations were imposed under subsection (2) of that section, a reference to their exercise in conformity with those limitations.

PART 4 — GATHERING INFORMATION

Power to gather additional information

This section applies where —

- (a) the FIU receives information provided by an initial provider (see section 21); and
- (b) the FIU reasonably considers that, for the proper fulfilment of any of its functions, it is necessary or expedient to seek additional information from a person specified in subsection (3).

The information provided under subsection (1) may be, but does not have to be, information comprising a disclosure under —

- (a) Part 3 (money laundering) of the *Proceeds of Crime Act 2008*;
- (b) Part III (terrorist property) of the *Anti-Terrorism and Crime Act 2003*; or
- (c) any other statutory provision prescribed in regulations made under section 32.

The person referred to in subsection (1)(b) may be —

- (a) the initial provider; or
- (b) a person who is not the initial provider but who —
 - (i) is mentioned in or is otherwise identifiable from the information received; or
 - (ii) to the reasonable knowledge or belief of the FIU, holds information that is relevant to the analysis of the information received.

Where this section applies the FIU may make a request to the person referred to in subsection (3), in accordance with the criteria specified in section 19, for the provision of additional information.

Upon receipt of a request under subsection (4), the person must provide the additional information in such form and by such time or within such date as the FIU reasonably requires.

Information provided under this section is not admissible in evidence in criminal proceedings against the person providing it or any of the person's employees, except in relation to an offence under section 20.

Subject to section 33 (*Data Protection Act 2002* not affected), the provision of information under this section does not breach —

- (a) any obligation of confidence owed by the person providing it; or
- (b) any other restriction on the disclosure of information (however imposed).

Criteria for making a request

A request under section 18(4) is duly made if —

- (a) it is made reasonably;
- (b) it relates to information falling within a category specified in subsection (2);
- (c) it specifies the nature of the information sought;
- (d) it specifies a reasonable period within, or date by which, the information must be provided; and
- (e) it is made in writing.

The categories of information which may be sought are —

- (a) information which may be obtained as a result of the application of the AML/CFT requirements (see section 21) to a person carrying on business in the regulated sector;
- (b) any other information which is necessary to determine whether a person is a customer (see section 21) or beneficial owner (see section 21) in relation to a transaction or activity of any nature;
~~and~~or
- (c) the particulars of specified transactions or activities which have been carried out during a specified period.

The DHA may by order amend subsection (2) to vary the categories of information that may be sought.

Before it makes an order under subsection (3), the DHA must consult the FIU and the Board.

An order under subsection (3) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that it is to be annulled, it ceases to have effect.

Offence for failing to comply with request

A person who fails to comply with a request under section 18(4) commits an offence.

It is a defence for a person charged under subsection (1) to prove —

- (a) that the information requested was not in the person's possession; or
- (b) that it was not reasonably practicable for the person to comply with the request.

A person who wilfully obstructs another person in complying with a request under section 18(4) commits an offence.

A person commits an offence if, when giving information to the FIU, the person —

- (a) makes a statement which the person knows is false in a material particular; or
- (b) recklessly makes a statement which is false in a material particular.

A person guilty of an offence under subsection (1), (3) or (4) is liable on summary conviction —

- (a) to custody for a term not exceeding 2 years; or
 - (b) to a fine not exceeding £5,000,
- or to both.

Subsection (7) applies if an offence under this section is committed by a body corporate and it is proved that an officer of the body authorised, permitted, participated in, or failed to take all reasonable steps to prevent, the commission of the offence.

The officer, as well as the body, is guilty of the offence and is liable to the penalty provided for the offence.

In this section, “**officer**” includes —

- (a) a director, secretary or other similar officer;
- (b) a person purporting to act as a director, secretary or other similar officer;
- (c) if the affairs of the body are managed by its members, a member; and
- (d) if the body has a registered agent (within the meaning of the *Companies Act 2006*), the registered agent.

Interpretation of Part 4

In this Part —

“**AML/CFT requirements**” has the meaning given by paragraph 3(1) of the *Anti-Money Laundering and Countering the Financing of Terrorism Code 2015*²;

“**beneficial owner**” has the meaning given by paragraph 3(1) of the *Anti-Money Laundering and Countering the Financing of Terrorism Code 2015*;

“**business in the regulated sector**” has the meaning given by paragraph 1 of Schedule 4 to the *Proceeds of Crime Act 2008*;

“**customer**” has the meaning given by paragraph 3(1) of the *Anti-Money Laundering and Countering the Financing of Terrorism Code 2015*;

“**initial provider**” means —

- (a) a person who makes a disclosure under Part 3 (money laundering) of the *Proceeds of Crime Act 2008* or Part III (terrorist property) of the *Anti-Terrorism and Crime Act 2003*;
- (b) a person carrying on business in the regulated sector;
- (c) an officer of the police force;
- (d) an officer of a police force or constabulary outside the Island;
- (e) the Collector of Customs and Excise; and
- (f) a person representing a law enforcement agency (within the meaning of section 10).

² SD 2015/0102

PART 5 – USE AND DISCLOSURE OF INFORMATION

Use of information by FIU

P2005/15/32

Information obtained by the FIU in connection with the exercise of any of its functions may be used by the FIU in connection with the exercise of any of its other functions.

Disclosure of information by FIU

P2005/15/33

Information obtained by the FIU in connection with the exercise of any of its functions may be disclosed by the FIU if the disclosure is for any permitted purposes (see section 28(1)).

Subject to section 33, a disclosure under this section does not breach —

- (a) any obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed).

Disclosure of information to FIU

P2005/15/34

Any person may disclose information to the FIU if the disclosure is made for the purposes of the exercise by the FIU of any of its functions.

Subject to section 33, a disclosure under this section does not breach —

- (a) any obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed).

Restrictions on further disclosure

P2005/15/35

Information disclosed by the FIU under section 23 to any person or body must not be further disclosed except —

- (a) for a purpose connected with any function of that person or body for the purposes of which the information was disclosed by the FIU, or otherwise for any permitted purposes; and
- (b) with the written consent of the FIU.

Consent under subsection (1) may be given —

- (a) in relation to a particular disclosure; or

- (b) in relation to disclosures made in circumstances specified or described in the consent.

Offence for failing to comply with restriction on further disclosure

A person who fails to comply with section 25 commits an offence.

A person guilty of an offence under subsection (1) or (2) is liable on summary conviction —

- (a) to custody for a term not exceeding 2 years; or
 - (b) to a fine not exceeding £5,000,
- or to both.

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

The officer, as well as the body, is guilty of the offence and is liable to the penalty provided for the offence.

In this section, “**officer**” includes —

- (a) a director, secretary or other similar officer;
- (b) a person purporting to act as a director, secretary or other similar officer;
- (c) if the affairs of the body are managed by its members, a member; and
- (d) if the body has a registered agent (within the meaning of the *Companies Act 2006*), the registered agent.

Amendment of enactments: disclosure of information

The DHA may by order amend any enactment relating to the disclosure or information so as to give better effect to the provisions of this Part.

But nothing in this section authorises the amendment of the *Data Protection Act 2002*.

Before exercising the power conferred by subsection (1), the DHA must consult the FIU and the Board and may consult such other persons as it considers appropriate.

An order under this section must not come into operation unless it is approved by Tynwald.

Interpretation of Part 5

In this Part, “**permitted purposes**” means the purposes of any of the following —

- (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the Island or elsewhere;
- (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of the Island or of any country or territory outside the Island;
- (c) the exercise of any function conferred on the FIU (so far as not falling within paragraph (a) or (b)); and
- (d) the exercise of any function which appears to the DHA to be a function of a public nature and which it designates by order.

Before it makes an order under subsection (1)(d), the DHA must consult the FIU and the Board.

An order under subsection (1)(d) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that it is to be annulled, it ceases to have effect.

PART 6 – MISCELLANEOUS AND SUPPLEMENTARY

Prosecution of offences relating to financial crime

P2005/15/38

The Attorney General may institute criminal proceedings concerning an offence or alleged offence relating to financial crime.

The Attorney General must provide such advice as he or she thinks appropriate, to such persons as he or she thinks appropriate, in relation to —

- (a) a criminal investigation relating to financial crime; or
- (b) criminal proceedings that arise out of such an investigation.

For the purposes of this section —

- (a) “**criminal investigation**” means any process —
 - (i) for considering whether an offence has been committed;
 - (ii) for discovering by whom an offence has been committed; or
 - (iii) as a result of which an offence is alleged to have been committed; and
- (b) proceedings for an offence are instituted —
 - (i) when a justice of the peace issues a summons or warrant under section 4 of the *Summary Jurisdiction Act 1989* (issue of summons to, or warrant for arrest of, accused) in respect of an offence;
 - (ii) when a person is charged with the offence after being taken into custody without a warrant; or

- (iii) when an information is preferred by the Attorney General in a case where there have been no committal proceedings,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they are to be taken to have been instituted at the earliest of those times.

General duty to pass information

P2005/15/36

The Chief Constable and the Collector of Customs and Excise must keep the FIU informed of any information relating to crime or conduct in the Island that appears to be likely to be relevant to the exercise by the FIU of any of its functions.

General duty to assist FIU

P2005/15/37

It is the duty of every person or body to which this section applies to assist the FIU in the exercise of its functions.

This section applies to —

- (a) any constable;
- (b) any officer of Customs and Excise;
- (c) the Income Tax Division of the Treasury; and
- (d) where applicable, each Department and each Statutory Board.

The DHA may by order amend subsection (2) to vary the persons or bodies to which this section applies.

Before it makes an order under subsection (3), the DHA must consult the FIU and the Board.

An order under subsection (3) must not come into operation unless it is approved by Tynwald.

Regulations

The DHA may make regulations —

- (a) in accordance with this Act; and
- (b) in respect of any matter which the DHA considers that regulations are necessary or expedient to give effect to this Act.

Regulations under subsections (1) may —

- (a) provide for their contravention to be an offence and prescribe a penalty for commission of the offence of a fine not exceeding £5,000 on summary conviction;
- (b) exempt a person from a provision of this Act to which the regulations relate;

- (c) permit a person to exercise a discretion in respect of any matters specified in the regulations;
- (d) require compliance with standards or the adoption of practices recommended or specified from time to time (whether before or after the making of the regulations) by a person or body specified in the regulations; and
- (e) contain consequential, incidental, supplementary and transitional provisions which the DHA considers to be necessary or expedient.

The power conferred by subsection (2)(e) includes the power to modify, adapt or amend any provision of this Act or any other enactment.

Before it makes regulations under subsection (1), the DHA must consult the FIU and the Board.

Regulations under this section must not come into operation unless approved by Tynwald.

Data Protection Act 2002 not affected

Nothing in this Act authorises a disclosure, in contravention of any provisions of the *Data Protection Act 2002*, of personal data which are not exempt from those provisions.

Transfer of staff and property

The organisation known as the Financial Crime Unit of the Isle of Man Constabulary ceases to exist.

Schedule 2 has effect with respect to the transfer of property, rights, liabilities and employees from or pertaining to the Financial Crime Unit of the Isle of Man Constabulary to the FIU.

Expenses

There are to be paid out of money provided by Tynwald any expenses of the FIU and the DHA under or arising as a result of this Act.

Amendments

The Acts specified in Schedule 3 are amended in accordance with that Schedule.

Without limiting Schedule 3, a reference in any enactment, whether or not specified in that Schedule, to the “**Financial Crime Unit**” or the “**Financial Crime Unit of the Isle of Man Constabulary**” is also to be taken as a reference to the FIU.

In this paragraph, “**enactment**” includes —

- (a) an Act;
- (b) a public document; and

- (c) any legislation of the United Kingdom, or any part of it, that applies to the Island –
 - (i) expressly or by implication (with or without modification);
 - (ii) by virtue of an Order in Council; or
 - (iii) by virtue of an Act of Tynwald or a provision made under an Act of Tynwald.

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SCHEDULE 1

Section 4

FINANCIAL INTELLIGENCE UNIT

PART 1 — FIU PROCEEDINGS

Exercise of functions

The functions of the FIU are to be exercised by the Director in the name and on behalf of the FIU but subject to any directions given by the Board and any Code of Practice under section 9.

Incidental powers

In connection with the exercise of its functions the FIU may (subject to the provisions of this Act) —

- (a) enter into contracts and other agreements (whether legally binding or not);
- (b) acquire and dispose of property; and
- (c) do such other things as the FIU considers necessary or expedient.

But the powers conferred by sub-paragraph (1) may be exercised only after consulting the Board.

A consent under sub-paragraph (2) may be given —

- (a) with respect to a particular case or with respect to a class of cases;
- (b) subject to such conditions as the Board considers appropriate.

Work

The FIU is to organise its work in accordance with the directions of the Director.

Annual plans

Before the beginning of each financial year the FIU must issue a plan setting out how it intends to exercise its functions during that year (“**the annual plan**”).

The annual plan must also include a statement of —

- (a) any priorities which the FIU has determined for that year;
- (b) any current strategic priorities determined by the Board under paragraph 11;
- (c) any current performance targets established by the FIU; and
- (d) the financial resources that are expected to be available to the FIU for that year.

Before issuing its annual plan for any financial year, the FIU must consult the Board and may consult such other persons as it considers appropriate.

The FIU must send a copy of the annual plan to —

- (a) the DHA;
- (b) the Board; and

- (c) such other persons as the FIU considers appropriate.

The DHA must lay a copy of the annual plan before Tynwald.

Annual reports

As soon as practicable after the end of each financial year the FIU must issue a report on the exercise of its functions during that year (an “**annual report**”).

The annual report must include an assessment of the extent to which the annual plan (see paragraph 4) for that year has been carried out.

The FIU must arrange for the annual report to be published in such manner as it considers appropriate.

The FIU must send a copy of the annual report to —

- (a) the DHA;
- (b) the Board; and
- (c) such other persons as the FIU considers appropriate.

The DHA must lay a copy of the annual report before Tynwald.

PART 2 — DIRECTOR

The Director

The Director is to be —

- (a) appointed (and, where relevant, re-appointed) by the DHA; and
- (b) employed by DHA on such terms and conditions as it determines.

Before appointing (or re-appointing) a person as Director the DHA must in any event consult —

- (a) the Board; and
- (b) the Council of Ministers.

- (3) To avoid doubt, the Director is an employee of the FIU.

Duty of Director to assist Board

It is the duty of the Director to —

- (a) assist the Board in the exercise of its functions; and
- (b) keep the Board informed of any information relating to crime in the Island or elsewhere that appears to be likely to be relevant to the exercise by the Board of any of its functions.

Delegation of functions of Director

Anything authorised or required to be done by the Director may be done by any other member of the staff of the FIU who is authorised for the purpose by the Director (whether generally or specially).

This paragraph does not apply in any case in relation to which specific provision for the delegation of any function of the Director is made by this Act or any other enactment.

Evidence

Any document purporting to be signed by the Director or the FIU staff member, or on behalf of the FIU must be received in evidence and, unless the contrary is proved, is to be taken to be so signed.

PART 3 — FIU BOARD

Membership of the Board

The FIU Board (“**the Board**”) is to consist of —

- (a) the Attorney General;
- (b) the Chief Constable; and
- (c) the Collector of Customs and Excise.

A member of the Board ceases to be such a member on ceasing to hold the office specified in subparagraph (1).

The Director may attend meetings of the Board as an adviser and has the right of access to the papers of the Board but such rights do not have effect in respect of any matter relating to the employment or continued employment of the Director.

Section 21 of the *Interpretation Act 1976* (delegation of functions by public officer) has effect in relation to the functions of the members of the Board.

The DHA may by order amend paragraph (1) to provide for a different composition of the Board.

Before it makes an order under subsection (5), the DHA must in any event consult —

- (a) the Board; and
- (b) the Council of Ministers.

An order under subsection (5) must not come into operation unless it is approved by Tynwald.

Functions of the Board

The Board —

- (a) has the functions conferred on it under this Act and any other statutory provision;
- (b) determines the general policy and principles by reference to which the FIU is to perform its functions and gives guidance and directions to the FIU accordingly;
- (c) determines strategic priorities for the FIU including the determination of matters in respect of which the FIU is not to exercise its functions;
- (d) supervises and keeps under review the exercise of functions by the Director;
- (e) keeps under review the question of whether the FIU is, in exercising its functions, using resources in an efficient and economic manner;

- (f) considers and makes recommendations or issues directions to the FIU as a result of –
 - (i) reviews carried out by it; or
 - (ii) any report made to it by the Director; and
- (g) otherwise gives guidance and directions to the Director.

The Board must consult the Director and such other persons as it considers appropriate before exercising its powers under sub-paragraph (1)(b) and (c).

General duty of Board

The Board must exercise the powers conferred on it under this Act in such manner and to such extent as appear to it to be best calculated to –

- (a) promote the efficiency and effectiveness of the FIU;
- (b) promote law enforcement.

PART 4 – ORGANISATION AND STAFF

FIU's staff

The FIU may have such employees as it appoints.

The FIU may make arrangements for persons to be seconded to it to serve as members of its staff.

Employees of the FIU are employees of the Public Services Commission and, in relation to them, the Public Services Commission is to be treated as the stationed employer (within the meaning of the *Public Services Commission Act 2015*).

Members of staff of the FIU who are not employees of the FIU are to be treated as employees of the Public Services Commission whilst they remain as such members and, in relation to them, the ~~Public Services Commission~~FIU is to be treated as the stationed employer (within the meaning of the *Public Services Commission Act 2015*).

References in any enactment to members of staff of the FIU are (unless the context otherwise requires) references to persons who either are employees of the FIU or have been seconded to the FIU to serve as members of its staff.

Remuneration and pensions of employees

Employees of the FIU are employed on such terms and conditions as the Board, with the approval of the DHA, determines.

Before requesting approval, the Board must consult the Public Services Commission.

The FIU may pay, or make payments in respect of, such pensions, allowances or gratuities to or in respect of its employees or former employees as the Board, with the approval of the DHA, determines.

Complaints

For the avoidance of doubt, Schedule 1 to the *Police Act 1993* (complaints against the police) continues to apply to members of the police force during any period of service as a member of staff of the FIU.

Such procedures as apply in respect of complaints against officers of customs and excise continue to apply in respect of such officers during any period of service as a member of staff of the FIU.

Employment provisions – designated persons who were constables

This paragraph sets out the treatment under other legislation of a person who—

- (a) is for the time being designated under section 11 as a person having the powers of a constable; and
- (b) immediately before becoming a member of staff of the FIU was a constable.

For the purposes of the following provisions of the *Employment Act 2006* ~~the, a~~ person ~~is not by virtue of designated under section 12(2) above~~ 11 as a person having the powers of a constable is not to be treated as employed under a contract of employment by the Chief Constable.

The provisions are —

- (a) section 59 (application of Part IV and related provisions to police) and the provisions mentioned in that section;
- (b) section 73 (application to police of section 61 and related provisions);
- (c) section 115 (health and safety cases);
- (d) paragraphs 3 and 4 of Schedule 4 so far as relating to police service (which deal respectively with Crown employment and police service).

For the purposes of section 25 of the *Trade Unions Act 1991* the person is not to be treated as excluded from the concept of a “worker”.

The person is not to be regarded as a constable (or a member of the police force) for the purposes of the *Police Act 1993*, other than in relation to —

- (a) section 9 (complaints against the police) of that Act;
 - (b) any regulations made under section 8 (police regulations) or 8A (regulations for special constables) of that Act pertaining to matters referred to in section 8(2)(e) or (f) or section 8A(2)(c) or (d) which arise in the context of a complaint against the person under section 9 of that Act; and
 - (c) any other matter specified in regulations made under section 32 of this Act.
- (5) Despite sub-paragraph (4), if the person resumes service with the police force after having been a member of staff of the FIU, the period of service with the FIU is to be treated as if that service had been with the police force for the purposes of remuneration and pension contributions and rights.

PART 5 — REPORTS AND INSPECTIONS

Duty of Board to report to DHA

The DHA may require Board to submit a report to it on such matters —

- (a) connected with the exercise of the FIU's functions; or
 - (b) otherwise connected with any of the FIU's activities,
- as are specified in the requirement.

A report submitted under sub-paragraph (1) must be in such form and be undertaken by such person or body as is so specified.

The DHA may —

- (a) arrange; or
- (b) require the Board to arrange,

for a report under this paragraph to be published in such manner as the DHA considers appropriate.

The DHA may exclude any part of a report from publication under sub-paragraph (3) if, in its opinion, publication of that part —

- (a) would be against the interests of national security;
- (b) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders;
- (c) could jeopardise the safety of any person; or
- (d) would breach the *Data Protection Act 2002* or an obligation of confidence imposed by statute or otherwise.

Inspections

The DHA may arrange for an appropriate person or body (“**inspectors**”) to inspect the FIU generally or in respect of a particular matter and to report on the efficiency and effectiveness of the FIU.

It is the duty of the FIU, the Director and all members of staff of the FIU to —

- (a) assist inspectors undertaking an inspection; and
- (b) provide all such information which is required by the inspectors for the proper performance of the inspection.

Before arranging an inspection the DHA must consult the Board.

The report of inspectors must be in such form as the DHA directs.

The DHA must arrange for every report which it receives under this paragraph to be published in such manner as it considers appropriate.

The DHA may exclude from publication under sub-paragraph (5) any part of a report if, in its opinion, publication of that part —

- (a) would be against the interests of national security;

- (b) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders;
- (c) could jeopardise the safety of any person; or
- (d) would breach the *Data Protection Act 2002* or an obligation of confidence imposed by statute or otherwise.

The DHA must send a copy of the published report to the FIU and the Board.

The FIU must –

- (a) prepare comments on the published report; and
- (b) send them to the DHA and the Board.

The DHA must arrange for the comments of the FIU which it receives under this paragraph to be published in such manner as it considers appropriate.

The DHA may exclude from publication under sub-paragraph (9) any part of the comments if, in its opinion, publication of that part –

- (a) would be against the interests of national security;
- (b) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders; or
- (c) could jeopardise the safety of any person.

Power to direct remedial action

This paragraph applies where the conclusion to be drawn from a report made under paragraph 17 or 18 is that –

- (a) in the opinion of the person making the report, the whole or any part of the FIU is (whether generally or in particular respects) not efficient or not effective; or
- (b) in that person's opinion, the whole or part of the FIU will cease to be efficient or effective (whether generally or in particular respects) unless specified measures are taken.

The DHA may direct the FIU to undertake such remedial measures as are specified in the direction within such reasonable time as is so specified.

Nothing in this paragraph authorises the DHA to direct the FIU to do or not to do anything in relation to a particular case or person.

SCHEDULE 2

Section 34

TRANSFER OF FUNCTIONS

1 Order for transfer

- (1) The DHA may make an order for the transfer of any of the property, rights and liabilities from or pertaining to the Financial Crime Unit of the Isle of Man Constabulary to the FIU.
- (2) In sub-paragraph (1), “**the Financial Crime Unit of the Isle of Man Constabulary**” includes the DHA and the police force in respect of their respective property, rights and liabilities in relation to the Financial Crime Unit of the Isle of Man Constabulary.
- (3) An order under this Schedule must not come into operation unless it is approved by Tynwald.
- (4) An order may set out the property, rights and liabilities to be transferred in one or more of the following ways —
 - (a) by specifying or describing them in particular;
 - (b) by identifying them generally by reference to a function or an undertaking from which they are to be transferred; or
 - (c) by identifying them by reference to a specified part of an undertaking from which they are to be transferred.

2 Effect of order

Where an order provides for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities —

- (a) at the time when the order comes into force, the property or interests, rights or liabilities vest, without further assurance, in the transferee; and
- (b) the provisions of that order in relation to that property or those interests, rights or liabilities have effect from that time.

3 Supplementary provisions of orders

- (1) An order may make such incidental, supplemental, consequential and transitional provision in connection with the transfers to be made in accordance with the order as the DHA considers appropriate.
- (2) In particular, an order may make provision, in relation to transfers in accordance with the order —
 - (a) for the transferee to be treated as the same person in law as the transferor;
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as is necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;

- (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as is necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the order; and
 - (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.
- (4) In this paragraph references to a transfer in accordance with an order include references to the creation of an interest, right or liability in accordance with an order.

SCHEDULE 3

Section 36

AMENDMENTS

1 Anti-Terrorism and Crime Act 2003

- (1) The *Anti-Terrorism and Crime Act 2003* is amended as follows.
- (2) In section 11 (disclosure of information: duty) —
 - (a) in subsection (2), for “a constable” substitute “the FIU”;
 - (b) subsection (8)(b) is repealed.
- (3) In section 12 (disclosure of information: permission) —
 - (a) in subsections (1), (2) and (4), for “a constable” substitute “the FIU”;
 - (b) subsection (5) is repealed.
- (4) In section 13 (co-operation with police), for “a constable”, wherever occurring, substitute “the FIU”;
- (5) In section 14 (failure to disclose: regulated sector) —
 - (a) in subsection (4), for “a constable” substitute “the FIU”;
 - (b) subsection (14) is repealed.
- (6) In section 15 (protected disclosures) —
 - (a) in subsection (4), for “a constable” substitute “the FIU”;
 - (b) subsection (7) is repealed.
- (7) In section 75(1) (interpretation), after the definition of “explosive” insert the following definition —

«“FIU” means the Financial Intelligence Unit” established by the *Financial Intelligence Unit Act 2015*;».
- (8) In section 76 (index of defined expressions), after the entry for “Facilities” insert the following entry —

«“FIU (in Part III).....Section 75».

2 Personal Liability (Ministers, Members and Officers) Act 2007

- (1) The *Personal Liability (Minsters, Members and Officers) Act 2007* is amended as follows.
- (2) In section 3(2) (liability of designated persons), after paragraph (k) insert —
 - «(ka) the Director of the Financial Intelligence Unit;
 - (kb) the staff of the Financial Intelligence Unit (whether serving as employees, secondees or otherwise);».

3 Proceeds of Crime Act 2008

- (1) The *Proceeds of Crime Act 2008* is amended as follows.
- (2) In section 142(5)(b) (failure to disclose: regulated sector), for “a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary” substitute “the FIU”.
- (3) In section 143(5) (failure to disclose: nominated officers in the regulated sector), for “a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary” substitute “the FIU”.
- (4) In section 144(5) (failure to disclose: other nominated officers), for “a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary” substitute “the FIU”.
- (5) In section 145(2)(a) (tipping off: regulated sector), for “a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary” substitute “the FIU”.
- (6) In subsections (1)(b), (2)(a), (3) and (4)(a) of section 151 (appropriate consent), for “a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary” substitute “the FIU”.
- (7) In section 152 (nominated officer: consent) —
 - (a) in subsections (2)(a), (3)(a) and (4)(a), for “a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary” substitute “the FIU”;
 - (b) in subsection (2)(b), for “such constable or customs officer” substitute “the FIU”;
 - (c) in subsection (3)(b), for “such a constable or customs officer” substitute “the FIU”;
and
 - (d) in subsection (4)(b), for “such a constable or customs officer” substitute “the FIU”.
- (8) In section 153(4)(a) (protected disclosures), for “a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary” substitute “the FIU”.
- (9) In section 154(1)(a)(i) (authorised disclosures), for “a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary” substitute “the FIU”.
- (10) In section 156 (threshold amounts) —
 - (a) in subsections (3) and (4), for “a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary” substitute “the FIU”;
 - (b) in subsection (3)(a), for “such constable or customs officer” substitute “the FIU”.
- (11) In section 158 (interpretation of Part 3), after subsection (13) insert —
 - « (14) “FIU” means the Financial Intelligence Unit established by the *Financial Intelligence Unit Act 2015*.».
- (12) In section 211 (disclosure of information in connection with the exercise of functions) —

- (a) in subsection (5)(e), for “a constable (whether or not serving with the Financial Crime Unit of the Isle of Man Constabulary)” substitute “the FIU (see section 158(14))”; and
- (b) in subsection (5)(f), for “a customs officer (whether or not serving with the Financial Crime Unit of the Isle of Man Constabulary)” substitute “the FIU (see section 158(14))”.

4 Interpretation Act 2015

- (1) The *Interpretation Act 2015* is amended as follows.
- (2) In paragraph 1 of the Schedule (definitions for all Manx legislation), insert the following definitions at the appropriate places in the alphabetical list –

«“**Financial Intelligence Unit**” or “**FIU**” see section 4 of the *Financial Intelligence Unit Act 2015*;» and

«“**staff of the Financial Intelligence Unit**” see paragraph [4413](#)(5) of Schedule 1 to the *Financial Intelligence Unit Act 2015*;».