



**Isle of Man
Government**

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Consultation Document



Draft

Fraud Bill

Cabinet Office
Oik Coonceil ny Shirveishee

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1. Background

- 1.1. It is considered that the Island's legislation relating to fraud is out of date and inadequate. Although there are offences on the Manx statute book which constitute "fraud" in the normal sense of the word, there is no actual statutory offence of fraud. In addition, unlike in other jurisdictions in the British Isles, there is also no common law offence of fraud in the Isle of Man, as the Island does not have any common law offences.
- 1.2. One of the difficulties with the Island's legislation relating to fraud was highlighted in 2013 by the Standing Committee of Tynwald on Public Accounts' (PAC) "Report on the handling by the Manx authorities of the case of Dr Dirk Hoehmann" (PP No 0097/13)¹.
- 1.3. The PAC Report found that if the Manx statute book had been updated in line with the UK's Fraud Act 2006 the necessary ingredients of criminal fraud would have been easier to prove than the prosecution under section 15 of the Theft Act 1981 (of Tynwald). Consequently, recommendation 4 of the PAC report was:
"That the DHA should introduce as soon as practicable into Manx statute an offence similar to that in section 2 of the Fraud Act 2006 (of the UK Parliament)."
- 1.4. The Council of Ministers, in its response to the PAC Report, which was laid before Tynwald in October 2013 (GD 0051/13)², accepted the report's recommendations and in relation to recommendation 4 the response stated:
*"Such a provision would normally be added to the next Criminal Justice Miscellaneous Provisions Bill but the Department is aware that such Bills are no longer deemed appropriate and instead more focussed Bills relating to particular areas of criminal justice law are to be progressed. As a result the Department has examined its programme to find a suitable legislative vehicle and has found no such Bill.
However, the Anti-Money Laundering and Countering Financing of Terrorism Strategic Group has recently identified the need for a new Fraud Bill and it is likely that this would be considered a suitable legislative vehicle to progress such an addition to Manx Statute."*
- 1.5. The legislation in the Island that, in effect, covers fraud, is contained within the Theft Act 1981. This Act is almost a word for word duplicate of the United Kingdom's Theft Act 1968, together with amendments introduced by the UK Theft Act 1978 (sections 16, 17 and 18) and the UK Theft (Amendment) Act 1996 (sections 15A, 15B and 24A). That is to say, the current fraud regime to a greater or lesser extent mirrors that which existed in the United Kingdom before the passing of new legislation in 2006.
- 1.6. The UK enacted the Fraud Act 2006³, basing the Act largely on the 2002 Law Commission Report on Fraud⁴, which concluded that the deception offences under the UK's Theft Act 1968, read together with the UK Theft Act 1978 and the UK Theft (Amendment) Act 1996, were too specific, overlapping and outdated.

¹ <http://www.tynwald.org.im/business/pp/Reports/2013-PP-0097.pdf>

² <http://www.tynwald.org.im/business/opqp/sittings/20112014/2013-GD-0051.pdf>

³ <http://www.legislation.gov.uk/ukpga/2006/35/contents>

⁴ LAW COM No 276, (Cm 5560) of June 2002. http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc276_Fraud.pdf

- 1.7. The purpose of the UK's Fraud Act was to clarify the law and provide law enforcement and prosecutors with modern, flexible legislation capable of combating the increasing sophistication of fraudulent activity and rapid technological advances made by fraudsters. The UK Act applies to offences committed on or after 15 January 2007 in England, Wales and Northern Ireland⁵.
- 1.8. In a Memorandum titled "Post-legislative assessment of the Fraud Act 2006" which was submitted by the Ministry of Justice to the House of Commons' Justice Select Committee in June 2012⁶ the Crown Prosecution Service stated that the Act had simplified fraud law and that the offences were easily understood by those involved in, and responsible for, the investigation of fraud. A conclusion of the assessment was that the introduction of the Fraud Act 2006 had been a marked success:

"We have carefully considered the evidence provided by those we consulted in this review. Our overall assessment of the Act is that it has been successful in achieving its initial objectives of modernising the former array of deception offences. It provides a clear statutory basis for fraud offences, targets complex fraud and introduces new offences specifically designed to assist in the prosecution of technology focused crime."

1.9. As referred to above, the UK's 2006 Act has, in particular, proved valuable in respect of a variety of technology-related criminality, such as that relating to credit cards, PIN entry devices, internet frauds and "phishing" and is flexible enough to respond to emerging types of criminality. In respect of intellectual property (IP) crime, it was stated that the Act had enabled the IP industry to report crime as fraud rather than before where the infringement of copyright or trading standards regulations were the only route forward for the industry.
- 1.10. Further information about how the UK's 2006 Act is used in practice can be found in the guidance published by the Crown Prosecution Service which can be found at: http://www.cps.gov.uk/legal/d_to_g/fraud_act/
- 1.11. In the Channel Islands, Guernsey has enacted legislation – the Fraud (Bailiwick of Guernsey) Law, 2009⁷ – which is directly and closely based on the UK's 2006 Act.
- 1.12. Ideally, new fraud legislation would have been issued for consultation earlier, but other criminal justice legislation, including legislation more relevant to the Island's assessment this year by MONEYVAL⁸ against international anti-money laundering and the countering the financing of terrorism standards, has been of higher priority. However, a draft Fraud Bill has been prepared by the Attorney General's Chambers and it is now ready for consultation.

⁵ The Fraud Act 2006 does not apply in Scotland where common law fraud is the "catch all" for most fraud prosecutions. In addition, there are the common law offences of "uttering" (when someone tenders 'as genuine' a forged document to the prejudice of another person) and embezzlement together with a range of statutory offences which are closely related to the common law offence.

⁶ See: <https://www.gov.uk/government/publications/post-legislative-assessment-of-the-fraud-act-2006> (Cm 8372).

⁷ <http://www.guernseylegalresources.gg/article/98084/Fraud-Bailiwick-of-Guernsey-Law-2009>

⁸ The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, or MONEYVAL, is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems.

2. Introduction to the Bill

- 2.1. The draft Fraud Bill at Appendix A largely mirrors the UK Fraud Act 2006 and its purpose is to provide a sophisticated, yet short and straightforward, Fraud Act for the Island with an armoury of modern and flexible statutory fraud offences.
- 2.2. The Bill provides for a general offence of fraud with three ways of committing it, which are by false representation, by failing to disclose information and by abuse of position. It creates new offences of obtaining services dishonestly and of possessing, making and supplying articles for use in frauds.
- 2.3. It also contains a new offence of participating in fraudulent business. This offence, broadly speaking, is a combination of section 9 of the UK's Fraud Act 2006 (participating in fraudulent business carried on by sole trader etc.) and section 993 of the UK's Companies Act 2006 (offence of fraudulent trading). This offence is in addition to sections 255 to 259 (offences antecedent to or in course of winding up) of the Companies Act 1931 and it does not affect the operation of those provisions.
- 2.4. Finally, the Bill includes specific provision about charges of, and penalties for, conspiracy to defraud.

3. Summary of the Bill

- 3.1. **Clauses 1 and 2**, respectively, give the title that the resulting Act will have if the Bill is passed and state that the Act will come into operation on a day, or days, determined by the Department of Home Affairs. Different provisions within the Act may be brought into operation on different days.
- 3.2. **Clause 3 (Fraud)** creates a new general offence of fraud and introduces the three possible ways of committing it. The three ways are set out in clauses 4, 5 and 6 and explained below. Subsection (3) sets out the penalties for the offence for which the maximum sentence for conviction on information is custody of up to 10 years or a fine, or both.
- 3.3. **Clause 4 (Fraud by false representation)** makes it an offence to commit fraud by false representation. Subsection (1)(a) makes clear that the representation must be made dishonestly. This test applies also to clauses 5 and 6. In effect there is a two-stage test⁹. The first question is whether a defendant's behaviour would be regarded as dishonest by the ordinary standards of reasonable and honest people. If answered positively, the second question is whether the defendant was aware that his or her conduct was dishonest and would be regarded as dishonest by reasonable and honest people.
- 3.4. Subsection (1)(b) means the person must make the representation with the intention of making a gain or causing loss or risk of loss to another. The gain or loss does not actually have to take place. The same requirement applies to conduct criminalised by clauses 5 and 6.

⁹ The current definition of dishonesty in English law was established *R v Ghosh* [1982] Q.B.1053: <http://www.bailii.org/ew/cases/EWCA/Crim/1982/2.html>. Although English case law is not binding in the Island it is considered by the Island's courts to be persuasive.

- 3.5. Subsection (2) defines the meaning of “*false*” in this context and subsection (3) defines the meaning of “*representation*”. A representation is defined as false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading.
- 3.6. Subsection (3) provides that a representation means any representation as to fact or law, including a representation as to a person's state of mind.
- 3.7. Subsection (4) provides that a representation may be express or implied. It can be stated in words or communicated by conduct. There is no limitation on the way in which the representation must be expressed. So it could be written or spoken or posted on a website.
- 3.8. A representation may also be implied by conduct. An example of a representation by conduct is where a person dishonestly misuses a credit card to pay for items. By tendering the card, he is falsely representing that he has the authority to use it for that transaction. It is immaterial whether the merchant accepting the card for payment is deceived by the representation. This offence would also be committed by someone who engages in “phishing”: i.e. where a person disseminates an email to large groups of people falsely representing that the email has been sent by a legitimate financial institution. The email prompts the reader to provide information such as credit card and bank account numbers so that the “phisher” can gain access to others' assets.
- 3.9. Subsection (5) provides that a representation may be regarded as being made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention). The main purpose of this provision is to ensure that fraud can be committed where a person makes a representation to a machine and a response can be produced without any need for human involvement. An example is where a person enters a number into a “CHIP and PIN” machine. Subsection (5) is expressed in fairly general terms because it would be artificial to distinguish situations involving modern technology, where it is doubtful whether there has been a “representation”, because the only recipient of the false statement is a machine or a piece of software, from other situations not involving modern technology where a false statement is submitted to a system for dealing with communications but is not in fact communicated to a human being (e.g., postal or messenger systems).
- 3.10. **Clause 5 (Fraud by failing to disclose information)** makes it an offence to fail to disclose information to another person where there is a legal duty to disclose the information. A legal duty to disclose information may include duties under oral contracts as well as written contracts. An example may be the failure of a lawyer to share vital information with a client within the context of their work relationship, in order to perpetrate a fraud upon that client. Similarly, an offence could be committed under this clause if a person intentionally failed to disclose information relating to his heart condition when making an application for life insurance.
- 3.11. **Clause 6 (Fraud by abuse of position)** makes it an offence to commit a fraud by dishonestly abusing one's position. It applies in situations where the defendant holds a position in which that person is expected to safeguard another's financial interests or not act against those interests. The term “abuse” is not limited by a definition, because it is intended to cover a wide range of conduct. Moreover subsection (2) makes clear that the offence can be committed by omission as well as by positive

action. For example, an employee who fails to take up the chance of a crucial contract in order that an associate or rival company can take it up instead at the expense of the employer commits an offence under this clause. An employee of a software company who uses his position to clone software products with the intention of selling the products on would commit an offence under this clause.

- 3.12. Another example covered by this clause is where a person who is employed to care for an elderly or disabled person has access to that person's bank account and abuses his or her position by transferring funds to invest in a high-risk business venture of his or her own.
- 3.13. **Clause 7 ("Gain" and "loss")** defines the meaning of "*gain*" and "*loss*" for the purposes of clauses 4 to 6. The definitions are essentially the same as those in section 35(2)(a) of the Theft Act 1981. Under these definitions, "*gain*" and "*loss*" are limited to gain and loss in money or other property. The definition of "*property*" which applies in this context is based on section 4(1) of the Theft Act 1981 (read with section 35(1) of that Act). The definition of "*property*" covers all forms of property, including intellectual property, although in practice intellectual property is rarely "*gained*" or "*lost*".
- 3.14. **Clause 8 (Possession etc. of articles for use in frauds)** makes it an offence for a person to possess or have under his or her control any article for use in the course of or in connection with any fraud. This wording draws on that of the existing law in section 27 of the Theft Act 1981. These provisions make it an offence for a person to "*go equipped*" to commit a burglary, theft or cheat, although they apply only when the offender is not at his place of abode. Subsection (2) sets maximum sentence for conviction on information is custody of up to 5 years or a fine, or both.
- 3.15. **Clause 9 (Making or supplying articles for use in frauds)** makes it an offence to make, adapt, supply or offer to supply any article knowing that it is designed or adapted for use in the course of or in connection with fraud, or intending it to be used to commit or facilitate fraud. For example, a person makes devices which when attached to electricity meters cause the meter to malfunction. The actual amount of electricity used is concealed from the provider, who thus makes a loss. Subsection (2) provides that the maximum sentence for conviction on information is custody of up to 10 years or a fine, or both.
- 3.16. **Clause 10 ("Article")** extends the meaning of "*article*" for the purposes of clauses 8 and 9 and certain other connected provisions so as to include any program or data held in electronic form. Examples of cases where electronic programs or data could be used in fraud are: a computer program can generate credit card numbers; computer templates can be used for producing blank utility bills; computer files can contain lists of other peoples' credit card details or draft letters in connection with 'advance fee' frauds.
- 3.17. **Clause 11 (Participating in fraudulent business)** makes it an offence for a person knowingly to be a party to the carrying on of fraudulent business. A person commits the offence of fraudulent trading under the company law if he or she is knowingly a party to the carrying on of a company's business either with intent to defraud creditors or for any other fraudulent purposes. The case law, certainly from the United Kingdom perspective, has established that:
- dishonesty is an essential ingredient of the offence;

- the mischief aimed at is fraudulent trading generally, and not just in so far as it affects creditors;
 - the offence is aimed at carrying on a business but can be constituted by a single transaction; and
 - it can be committed only by persons who exercise some kind of controlling or managerial function within the b.
- 3.18. The maximum sentence for this offence for conviction on information is custody of up to 10 years or a fine, or both.
- 3.19. **Clause 12 (Obtaining services dishonestly)** makes it an offence for any person, by any dishonest act, to obtain services for which payment is required, with intent to avoid payment. The person must know that the services are made available on the basis that they are chargeable, or that they might be. It is not possible to commit the offence by omission alone and it can be committed only where the dishonest act was done with the intent not to pay for the services as expected. This offence replaces the offence of obtaining services by deception in section 14 of the Theft Act 1981, though the new offence contains no deception element. Under subsection (3) the maximum sentence for conviction on information is custody of up to 5 years or a fine, or both.
- 3.20. The offence requires the actual obtaining of the service. For example, data or software may be made available on the Internet to a certain category of person who has paid for access rights to that service. A person dishonestly using false credit card details or other false personal information to obtain the service would be committing an offence under this clause. The clause would also cover a situation where a person is able to get past the Gaiety theatre or Villa Marina staff and watch a performance without paying — such a person is not deceiving the provider of the service directly, but is obtaining a service (in this case, entertainment) which is provided on the basis that people will pay for it.
- 3.21. **Clause 13 (Charges of and penalty for conspiracy to defraud)** is based on section 12 of the Criminal Justice Act 1987 (of Parliament). This clause sets out that a charge of conspiracy to defraud can be brought where two or more parties agree to a course of action that will involve criminal conduct if the agreement is carried. The maximum sentence for conviction on information is custody of up to 10 years or a fine, or both.
- 3.22. **Clause 14 (Liability of officers for offences by body corporate)** provides that if persons who have a specified corporate role are party to the commission of an offence under the Act by their body corporate, they will be liable to be charged for the offence as well as the corporation. By virtue of subsection (3)(a) and (b) this offence applies to directors, secretaries and other similar officers of bodies corporate. Paragraph (c) of subsection (3) provides that if the body corporate charged with an offence is managed by its members a member can be prosecuted too. Paragraph (d) provides that where a body corporate has a registered agent, that person is also liable to be prosecuted.
- 3.23. **Clause 15 (Evidence)** is similar to section 32(1) of the Theft Act 1981. Under this clause a person is protected from incriminating him or herself or his or her spouse or civil partner for the purposes of offences under the Act and related offences, while

nonetheless being obliged to co-operate with certain civil proceedings relating to property. However, the clause goes further in removing privilege in respect of 'related offences'. "*Related offence*" is defined in subsection (4) as meaning any form of fraudulent conduct or purpose.

- 3.24. **Clause 16 (Minor and consequential amendments etc.)** introduces Schedules 1, 2 and 3, which contain amendments (largely to the Theft Act 1981), repeals (of parts of the Theft Act 1981) and make transitional and saving provision in relation to the amendments and repeals made by Schedules 1 and 2.

Consultation questions

QUESTION 1
Do you have any general comments on the proposal to update the Island's fraud law?
QUESTION 2
Do you have any specific comments on any of the provisions in the draft Fraud Bill?

4. Responding to the consultation

- 4.1. The draft of the Bill has been prepared for the purposes of consultation. Further refinement of the layout and content of the Bill may be undertaken in the light of the responses to the consultation.
- 4.2. If you have any views or observations, or there is some point of clarification you would like to receive, you are invited to respond either by writing to —

Anne Shimmin
Fraud Bill Consultation
Cabinet Office
Government Office
Bucks Road
Douglas
ISLE OF MAN
IM1 3PN

or by emailing fraudbill@gov.im

- 4.3. The closing date for the receipt of comments is **7 October 2016**.
- 4.4. Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group it would be

helpful to make your position clear. To ensure that the process is open and honest responses can only be accepted if you provide your name with your response.

- 4.5. It may be useful, when giving your feedback, to make reference to the number and title of the specific provision(s) set out in the Bill that you wish to discuss.
 - 4.6. The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.
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APPENDIX A



FRAUD BILL 2016

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

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

1 Short title

The short title of this Act is the Fraud Act 2016.

2 Commencement

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

PART 2 – FRAUD

3 Fraud

P2006/35/1

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

- (3) A person who is guilty of fraud is liable –
 - (a) on conviction on information, to custody for a term not exceeding 10 years or to a fine (or to both);
 - (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000 (or to both).

4. Fraud by false representation

P2006/35/2

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

5 Fraud by failing to disclose information

P2006/35/3

A person is in breach of this section if he or she –

- (a) dishonestly fails to disclose to another person information which the person is under a legal duty to disclose; and
- (b) intends, by failing to disclose the information –
 - (i) to make a gain for the person or another; or
 - (ii) to cause loss to another or to expose another to a risk of loss.

6 Fraud by abuse of position

P2006/35/4

- (1) A person is in breach of this section if he or she –

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

7 “Gain” and “loss”

P2006/35/5

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

8 Possession etc. of articles for use in frauds

P2006/35/6

- (1) A person is guilty of an offence if the person has in his or her possession or under his or her control any article for use in the course of or in connection with any fraud.
- (2) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to custody for a term not exceeding 5 years or to a fine (or to both);
 - (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000 (or to both).

9 Making or supplying articles for use in frauds

P2006/35/7

- (1) A person is guilty of an offence if he or she makes, adapts, supplies or offers to supply any article –

- (a) knowing that it is designed or adapted for use in the course of or in connection with fraud; or
 - (b) intending it to be used to commit, or assist in the commission of, fraud.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on information, to custody for a term not exceeding 10 years or to a fine (or to both);
 - (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000 (or to both).

10 “Article”

P2006/35/8(1)

- (1) For the purposes of the provisions specified in subsection (2) “article” includes any program or data held in electronic form.
- (2) Those provisions are –
- (a) sections 8 and 9; and
 - (b) subsection (7)(b) of section 1 (powers of a constable to stop and search persons, vehicles etc.) of the *Police Powers and Procedures Act 1998*, so far as it relates to articles for use in the course of or in connection with fraud.

11 Participating in fraudulent business

P2006/35/9 and drafting

- (1) A person is guilty of an offence if he or she is knowingly a party to the carrying on of a business with intent to defraud creditors or for any other fraudulent purpose.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on information, to custody for a term not exceeding 10 years or to a fine (or to both);
 - (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000 (or to both).
- (3) “Fraudulent purpose” has the same meaning as in section 259 of the *Companies Act 1931*.
- (4) This section is in addition to sections 255 to 259 (offences antecedent to or in course of winding up) of the *Companies Act 1931*.

PART 3 – OBTAINING SERVICES DISHONESTLY

12 Obtaining services dishonestly

P2006/35/11

- (1) A person is guilty of an offence under this section if he or she obtains services for the person or another –
 - (a) by a dishonest act; and
 - (b) in breach of subsection (2).
- (2) A person obtains services in breach of this subsection if –
 - (a) they are made available on the basis that payment has been, is being or will be made for or in respect of them;
 - (b) the person obtains them without any payment having been made for or in respect of them or without payment having been made in full; and
 - (c) when the person obtains them, he or she knows –
 - (i) that they are being made available on the basis described in paragraph (a); or
 - (ii) that they might be,but intends that payment will not be made, or will not be made in full.
- (3) A person guilty of an offence under this section is liable –
 - (a) on conviction on information, to custody for a term not exceeding 5 years or to a fine (or to both);
 - (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000 (or to both).

PART 4 – CONSPIRACY TO DEFRAUD

13 Charges of and penalty for conspiracy to defraud

P1987/38/12

- (1) If –
 - (a) a person agrees with any other person or persons that a course of conduct shall be pursued; and
 - (b) that course of conduct will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement if the agreement is carried out in accordance with their intentions,the fact that it will do so shall not preclude a charge of conspiracy to defraud being brought against any of them in respect of the agreement.
- (2) A person guilty of conspiracy to defraud is liable on conviction on information to custody for a term not exceeding 10 years or a fine or both.

- (3) This section is in addition to section 330 (conspiracy) of the *Criminal Code 1872*.

PART 5 – SUPPLEMENTARY

14 Liability of officers for offences by body corporate

P2006/35/12

- (1) Subsection (2) applies if an offence under this Act is committed by a body corporate and it is proved that an officer of the body corporate authorised, permitted, participated in, or failed to take all reasonable steps to prevent the commission of the offence.
- (2) The officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) 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 corporate are managed by its members, a member; and
 - (d) if the body corporate has a registered agent, as required by section 74 of the *Companies Act 2006* and section 5 of the *Limited Liability Companies Act 1996*, the registered agent.

15 Evidence

P2006/35/13

- (1) A person is not to be excused from —
- (a) answering any question put to the person in proceedings relating to property; or
 - (b) complying with any order made in proceedings relating to property, on the ground that doing so may incriminate the person or his or her spouse or civil partner of an offence under this Act or a related offence.
- (2) But, in proceedings for an offence under this Act or a related offence, a statement or admission made by the person in —
- (a) answering such a question; or
 - (b) complying with such an order,
- is not admissible in evidence against the person or (unless they married or became civil partners after the making of the statement or admission) his or her spouse or civil partner.
- (3) “Proceedings relating to property” means any proceedings for —
- (a) the recovery or administration of any property;

- (b) the execution of a trust; or
 - (c) an account of any property or dealings with property,
and “property” means money or other property whether real or personal
(including things in action and other intangible property).
- (4) “Related offence” means any other offence involving any form of fraudulent conduct or purpose.

16 Amendments, repeals and transitional and saving provisions

- (1) Schedule 1 contains amendments.
- (2) Schedule 2 contains repeals.
- (3) Schedule 3 contains transitional and saving provisions.

SCHEDULE 1

[Section 16(1)]

AMENDMENTS

1 Theft Act 1981

- (1) The *Theft Act 1981* is amended as follows.
- (2) In section 20(1) (liability of company officers for offences by company), for “14, 15, 16, 17, 18 or 19” substitute **18 or 19**.
- (3) In section 22(3) (suppression, etc, of documents – interpretation), omit the words ““deception” has the same meaning as in section 14, and”.
- (4) In section 24A (dishonestly retaining a wrongful credit), after subsection (2), insert –
 - (2A)** A credit to an account is wrongful to the extent that it derives from –
 - (a) theft;
 - (b) blackmail;
 - (c) fraud (contrary to section 3 of the *Fraud Act 2016*); or
 - (d) stolen goods.
- (5) In subsection 24A(7), for the words “subsection (4)” substitute **subsection (2A)**.
- (6) For subsection 24A(9) substitute –
 - (9)** “Account” means an account kept with –
 - (a) a bank; or
 - (b) a person carrying on a business which falls within subsection (10) below.
 - (10) A business falls within this subsection if –
 - (a) in the course of the business money received by way of deposit is lent to others; or
 - (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.
 - (11) References in subsection (10) above to a deposit must be read with –
 - (a) section 36 of the *Financial Services Act 2008*; and
 - (b) any relevant order under that section,but any restriction on the meaning of deposit which arises from the identity of the person making it is to be disregarded.
 - (12) For the purposes of subsection (10) above –

- (a) all the activities which a person carries on by way of business shall be regarded as a single business carried on by him; and
 - (b) “money” includes money expressed in a currency other than sterling. **22**.
- (7) In section 26(4) (scope of offences relating to stolen goods – interpretation), for “in the circumstances described in section 14(1)” substitute **23**, subject to subsection (5) below, by fraud (within the meaning of the *Fraud Act 2016*) **22**.
- (8) After section 26(4), insert –
- 23**(5) Subsection (1) above applies in relation to goods obtained by fraud as if –
 - (a) the reference to the commencement of this Act were a reference to the commencement of the *Fraud Act 2016*; and
 - (b) the reference to an offence under this Act were a reference to an offence under section 3 of that Act. **22**.
- (9) In section 27 (going equipped for stealing, etc) –
- (a) in subsections (1) and (3) for the words “burglary, theft or cheat” substitute **23** burglary or theft **22**; and
 - (b) in subsection (5) omit “, and “cheat” means an offence under section 14”.

2 Criminal Law Act 1981

In paragraph 2 of Schedule 6 to the *Criminal Law Act 1981* (compensation orders), after the words “*Theft Act 1981*” insert **23** or *Fraud Act 2016* **22**.

3 Limitation Act 1984

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

- 23**(b) obtaining any chattel (in the Island or elsewhere) by –
 - (i) blackmail (within the meaning of section 23 of the *Theft Act 1981*); or
 - (ii) fraud (within the meaning of the *Fraud Act 2016*); **22**.

4 Police Powers and Procedures Act 1998

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

- 23**(d) fraud (contrary to section 1 of the *Fraud Act 2016*). **22**.

SCHEDULE 2

[Section 16(2)]

REPEALS

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

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

SCHEDULE 3

[Section 16(3)]

TRANSITIONAL AND SAVING PROVISIONS

1 Abolition of deception offences

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

2 Dishonestly retaining a wrongful credit under the *Theft Act 1981*

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

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

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

4 Limitation periods under the *Limitation Act 1984*

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

Impact Assessment

IMPACT ASSESSMENT OF: Fraud Bill
DEPARTMENT: Cabinet Office
DATE: 18/07/2016
VERSION NUMBER: 0.1

Responsible Officer: Anne Shimmin, External Relations Manager

E-mail Addresses: Anne.shimmin@gov.im

Telephone numbers: 685202

SUMMARY: INTERVENTION AND OPTIONS

What is the Bill intended to do: The Bill is intended to make the law clear, simple to follow and apply and to do so in modern form. In this case the issue in question is fraud.

Nature of problem: Current law relating to the offences that make up or amount to fraud is primarily located within the Theft Act 1981. The United Kingdom has updated its legislation via the Fraud Act 2006 (of Parliament) and it is considered their model is simple to understand and apply, and has worked well. The time has come to modernise Manx law and to introduce a statutory offence of fraud (rather than rely on the Theft Act 1981).

Purpose of Proposal: To combat fraud by making the law clear, explicit and easy to apply.

Means by which it is to be achieved

Option 1: The Bill is not progressed.

If the Bill is not progressed the law will remain as it is in the Theft Act 1981 and address the problems of 35 years ago, rather than the ingenuity of fraudsters in the 21st century. This option will not comply with the recommendation approved by Tynwald in 2013.

Option 2: (preferred option): Promote the Bill as drafted.

In the event the Bill is promoted either as drafted or as amended after consultation the Island will have legislation that is modern, clear and simple to apply. Furthermore, the Bill may enhance the Island's reputation as the international community, and businesses from off Island, will recognise the Island has legislation specifically designed and titled to combat fraud.

Ministerial sign off for Options stage We have read the Impact Assessment and are satisfied that given the available information, it represents a reasonable view of the likely costs/benefits and impact of the preferred option.

Minister

SUMMARY: ANALYSIS AND EVIDENCE

IMPACT OF PROPOSAL

Resource Issues - Financial (including personnel):

Statement: The Bill is not expected to result in any increase in costs to, or personnel employed by, Government.

Likely Financial Benefits One Off: None.

Estimated Average Annual savings (excluding one off): None.

Are there any costs or benefits that are not financial i.e. social:

There are not expected to be any costs, though having easily understandable legislation, which states what it is (i.e. you don't have to know which Act to look in to find out what the law is in relation to fraud, because the clue is in the title) is good practice.

Has Treasury Concurrence been given for the preferred option?: The Bill would not be intended to increase or decrease the revenue of Government, and consequently concurrence has not been sought.

Key Assumptions:

Key assumptions are —

1. the Island's standing in the international community is important both as a matter of national identity and from a business point of view, and will be aided by having a specific Act designed to address fraud; and
2. residents of the Island, whether in their private capacity or involved in business activity of any kind, would wish to continue to have provisions outlawing fraud and the obtaining of services dishonestly and will welcome the modernisation of language and law in this matter to better address the way things are done in the 21st century.

Approximate date for legislation to be implemented if known:

Subject to public consultation and review, and the other priorities of the new Administration, the current intent would be to introduce the legislation into the Branches during the 2016/2017 legislative year.

Link to Agenda For Change: Good government.

Link to Department/Statutory Board/Office Aims and Objectives:

Ensure the delivery of modern legislation in accordance with the Legislative Programme and compliance with the Island's international obligations.

SUMMARY: CONSULTATION

Consultation in line with Government standard consultation process: This is a short Bill and it is therefore considered a standard period of 6 weeks for the receipt of views from the public is appropriate.

Date:

Statement:

APPENDIX C

Consultation Criteria

The Six Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

APPENDIX D

LIST OF PERSONS OR BODIES CONSULTED ABOUT THIS BILL

- Members of Tynwald
- Chief Officers of Government Departments, Statutory Boards and Offices
- Local Authorities
- Isle of Man Courts of Justice
- Chamber of Commerce
- Isle of Man Employers Federation
- Isle of Man Law Society
- Isle of Man Constabulary
- Isle of Man Trade Council
- Positive Action Group
- Association of Corporate Service Providers



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