

# Summary of responses to the Cabinet Office consultation on the Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Bill 2017

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## **1. The consultation**

The Cabinet Office asked for feedback on proposed changes to the Isle of Man's anti-money laundering and other financial crime legislation. These changes were included in a draft Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Bill 2017 and accompanying draft Anti-Money Laundering and Countering the Financing of Terrorism (Unregulated Trustees) Code 2017.

The proposals sought to introduce new anti-money laundering requirements relating to unregulated trustees, foundations and other matters. The consultation was undertaken from 18 December 2017 to 5 February 2018.

## **2. Why we consulted**

The Cabinet Office consulted in order to provide an opportunity for the financial services industry, relevant non-financial services, professional organisations and members of the public, in particular those who act as trustees, to submit their views concerning some important measures.

Most of the proposed changes were identified following the assessment of the Isle of Man by MONEYVAL. The Isle of Man is a member of MONEYVAL which is a committee of the Council of Europe. Part of its role is to undertake evaluations of members against international standards for anti-money laundering and combatting the financing of terrorism. The Isle of Man was assessed in 2016.

## **3. Who we consulted**

A full public consultation was undertaken, which was published on the Isle of Man Government's Consultation Hub: <https://consult.gov.im/cabinet-office/anti-money-laundering-and-other-financial-crime/>.

A list of groups, bodies and professional organisations who were also consulted is included at Appendix I.

## **4. Respondents**

A summary of respondents is provided below:

- The consultation attracted 18 responses in total; 12 by email or post and 6 online.
- Responses were received from 12 businesses and industry associations; 2 local authorities, 2 individuals, 1 Government Department and 1 charity.
- 14 respondents provided comments and 4 respondents made no comments.
- 10 respondents gave permission for their responses to be published in full or anonymously. These responses will be made available via the Consultation Hub <https://consult.gov.im> from Wednesday 28 February 2018.
- 9 respondents gave permission for their name (or the name of their organisation) to be published, and this list is included at Appendix II.

## **5. Consultation responses**

Responses were sought on 8 key parts of the draft Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Bill 2017, in addition to the associated draft Anti-Money Laundering and Countering the Financing of Terrorism (Unregulated Trustees) Code 2017.

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These responses are summarised below.

- *Part 1 – Introductory*

This part of the Bill dealt with the short title and commencement. There were no comments received.

- *Part 2 - Codes relating to money laundering and the financing of proliferation and terrorism*

This part of the Bill dealt with proposed amendments to the Proceeds of Crime Act 2008 and the Terrorism and Other Financial Crime (Financial Restrictions) Act 2014.

Nine responses were received; two were supportive of the proposals and five raised some queries although were generally content.

One supportive comment stated:

*“Anyone taking on the responsibility of being a trustee should understand the significance of their role and that includes requiring them to disclose their status and to keep records of the work they undertake in that capacity”.*

The main issues identified included the following:

- Increased regulatory burden.
- Cost of compliance in circumstances where there may be no commercial means of recovering such costs.
- Individuals may be discouraged from accepting trusteeships.
- There may be unwarranted charges against a trust fund.
- Unforeseen consequences if the existing Codes are extended to all domestic trusteeships, irrespective of the type of trust concerned.
- Charities will be required to record details of all donors to the charity, no matter how small the donation.
- It would be better to define a specific number of working days for making records available which are not in the form of hard copies, rather than “without undue delay” as is provided for in relation to records kept in hard copies outside the island. It was suggested 3 days could be appropriate.

- *Part 3 - Foreign Trustee Duties*

This part of the Bill dealt with proposed amendments to the Trustee Act 2001.

Seven comments were received. One comment was generally supportive and the others raised queries or were against the proposal.

The main issues identified included the following:

- The applicable rules should be those of the jurisdiction in which the foreign trustee is resident, not those of the IoM.
- Any necessary changes should be made to anti-money laundering legislation (Proceeds of Crime Act 2008) and not to trust legislation (Trustee Act 2001).
- The proposals would be impossible to monitor and enforce. If there will be no monitoring or enforcement, how can the proposals be justified?
- There would be duplication of work if a Manx trust has a foreign and a Manx trustee.
- Proposals could place the Isle of Man at a competitive disadvantage.

- Proposals for record format / retrieval and the power to disclose to competent authorities would go further than what is required by MONEYVAL.
  - Proposals to require a foreign trustee to produce documentation could be contrary to privacy principles.
  - It would be better to define a specific number of working days for making records available which are not in the form of hard copies, rather than “without undue delay” as is provided for in relation to records kept in hard copies outside the island. It was suggested 3 days could be appropriate.
- *Part 4 - Criminal jurisdiction in relation to certain offences*

This part of the Bill dealt with proposed amendments to the Criminal Justice Act 1991.

Three comments were received and they were all supportive of these proposals.

- *Part 5 - Penalties for failure to comply with certain requirements*

This part of the Bill dealt with proposed amendments to the Anti-Terrorism and Crime Act 2003; Financial Intelligence Unit Act 2016 and Proceeds of Crime Act 2008.

Six responses commented on penalties, and the majority were in favour of the changes.

One supportive comment stated:

*"We are in agreement with the proposals and that the penalties should be proportionate to the crime and the size of corporate bodies".*

One issue was raised and clarification was sought in other areas as follows:

- Any unlimited fine would be excessive as could be disproportionate to offence committed.
  - Penalties should be proportionate to the crime and the size of corporate bodies.
  - Requests for information made by law enforcement will ideally carry some element of 'timeliness' or 'mutually agreed response time'.
  - Further guidelines on the scale of fines likely to be imposed would be helpful in ensuring sanctions remain proportionate.
- *Part 6 - Additional gambling decisions subject to appeal*

This part of the Bill dealt with proposed amendments to the Gambling (Amendment) Act 2006.

Four responses were received, and there was no opposition to the proposal. There were two queries raised as follows:

- Clarification was sought on whether there is appropriate provision to create an independent review body to consider appeals against the decisions made by the Gambling Supervision Commission.
- It was suggested that individuals working for licensed operators could serve on tribunals to provide industry perspective during the appeals process.

- *Part 7 - Additional record keeping requirements in respect of foundations*

This part of the Bill dealt with proposed amendments to the Foundations Act 2011.

Three responses were received, one of which was generally supportive. Two responses raised a number of concerns and the main issues identified included the following:

- The requirements for public filing are not in line with requirements for other entities which could put the IoM at a competitive disadvantage.
  - If the rules had to be filed they should be redacted to remove 'sensitive data' and only made available to the competent authorities.
  - Sufficient safeguards are in place for foundation rules already.
  - Does the Bill come into force by an Order? If so, it can be introduced quickly and would give the Department of Home Affairs the ability to introduce subsequent changes without returning to Tynwald and there could be a possibility of a trust register being introduced without further consultation.
  - MONEYVAL has not specified why the rules must be filed, although it considers the rules to be 'basic information' and that the rules are the foundation's basic regulating powers.
  - Why is it necessary for the rules to be public if they could be simply filed and accessible to the registries/authorities?
  - Foundations should not be treated in the same way as companies when they are different legal entities.
  - Adding a public filing requirement does not enhance the regulation of foundations.
- *Part 8 - Power to make enquiries in relation to information submitted for registration*

This part of the Bill dealt with proposed amendments to the Companies Act 1931; Companies Act 2006; Foundations Act 2011; Limited Liability Companies Act 1996 and Partnership Act 1909.

Six responses were received. Generally these were supportive of the principle and one was strongly in favour. A number of queries were raised which included:

- If there is nothing in place to prevent the registrar from seeking additional information, what necessity is there for extra powers to do same?
- There should be right of appeal against a refusal to accept a document.
- Officers within any registry should be trained and competent to avoid unnecessary enquiries which could cause delays in registrations.

## **6. Cabinet Office responses**

The Cabinet Office has considered all of the comments and suggestions received. As a result of the consultation, some parts of the Bill and the Code have been amended. The Cabinet Office's responses are summarised below.

- *Part 1 – Introductory*

No changes have been made to this part of the Bill.

- *Part 2 - Codes relating to money laundering and the financing of proliferation and terrorism*

The Cabinet Office has confirmed the following:

- Introducing into law requirements for record keeping and other matters in respect of all trustees (including unregulated domestic trustees and foreign trustees) was a recommended action by MONEYVAL.
- Making unregulated trustees subject to the existing 2015 AML/CFT Code would not be appropriate as that Code deals with regulated entities only.
- Charities would be required to follow this Code but it is expected that they would already be keeping records and other relevant documentation. A number of charities are already regulated as Specified Non-Profit Organisations (SNPOs).
- Individuals acting as trustees should already be keeping records that are retrievable in order to fulfil their duties, so there should be few concerns regarding compliance and regulatory burden.
- Unregulated trustees will not be registered or regulated – the requirements will be widely communicated but no supervision for compliance will take place. However should a failure to comply with the Code be identified in the course of the activities of competent authorities, this would be pursued.
- The Bill makes no requirements to record details of donors or donations.
- The AML/CFT Code which applies to regulated trustees does not set a 3 day requirement but only requires “without due delay”. The introduction of a 3 day requirement would be going further than what is required of the main bulk of Isle of Man trustees and those more likely to be involved in the most serious investigations.
- FATF R25 only requires “timely access” and does not specify any 3 day requirement. The introduction of a 3 day requirement would be going beyond what the FATF Recommendations require.
- A number of suggestions were made to help clarify the new Code and these will be incorporated into a new draft.
- Part 2 has been amended to include the power under POCA to make a Code for Foreign Trustees.

- *Part 3 - Foreign Trustee Duties*

The Cabinet Office has confirmed the following:

- Foreign Trustee Duties was a recommended action by MONEYVAL; however the requirements of FATF Recommendation 25, to which this relates, are very broadly written.
- The IoM needs to show progress as a result of the mutual evaluation process, but the concerns identified by the consultation are considered to be valid and the Bill has therefore been redrafted.
- No amendments will be introduced to the Trustee Act 2001.
- Part 3, Foreign Trustee Duties has been removed from the Bill.
- Part 2, Codes Relating to Money Laundering and the Financing of Proliferation and Terrorism, has been amended to include the power under POCA to make a Code for Foreign Trustees.
- The enabling power will allow a Code to be drafted in due course to cover record keeping and other requirements in respect of foreign trustees.

- *Part 4 - Criminal jurisdiction in relation to certain offences*

The Cabinet Office has confirmed the following:

- Due to the removal of Part 3 (Foreign Trustee Duties) from the Bill, Part 4 (Criminal jurisdiction in relation to certain offences) has been renumbered to become Part 3.
- No further changes have been made to this part of the Bill.

- *Part 5 - Penalties for failure to comply with certain requirements*

The Cabinet Office has confirmed the following:

- The policy aim within this part of the Bill remains unchanged with consistent penalties introduced 'on information' such that sanctions available to the regulator and law enforcement would be the same.
- However, the draft Bill has needed to be amended to take account of subsections (4) and (5) of the new operational section 55 of the Interpretation Act 2015, which has the effect of increasing the amount of a fine, from the level within which the fine as currently drafted would fall, to the level above.
- As such the existing statutory maximum fine of £5,000 will now fall within level 4 of the scale set out in s.55(1) but as a result of those subsections, those references move up to level 5 and become a maximum fine of £10,000 on summary conviction.
- Due to the removal of Part 3 (Foreign Trustee Duties) from the Bill, Part 5 (Penalties for failure to comply with certain requirements) has been renumbered to become Part 4.

- *Part 6 - Additional gambling decisions subject to appeal*

The Cabinet Office has confirmed the following:

- There is provision to establish a Gambling Appeals Tribunal.
- The suggestion that individuals working for licensed operators could serve on a tribunal to provide industry perspective was passed to the Gambling Supervision Commission (GSC) which confirmed that appointments to the Gambling Appeals Tribunal will be made by the Appointments Commission, which is an independent body. The GSC has agreed to pass this suggestion to the Appointments Commission for consideration.
- Due to the removal of Part 3 (Foreign Trustee Duties) from the Bill, Part 6 (Additional gambling decisions subject to appeal) has been renumbered to become Part 5.
- No other changes have been made to this part of the Bill.

- *Part 7 Additional record keeping requirements in respect of foundations*

The Cabinet Office has confirmed the following:

- Foundations are treated as legal persons, not as legal arrangements (e.g. trusts).
- The FATF Recommendations expect certain information on a legal person to be available to the public, in this case the basic regulating powers that are in a foundation's rules. These are looked at as being the equivalent of the memorandum and articles of a 1931 or 2006 Act Company.
- The Bill recognises the sensitivity of personal information and allows this to be redacted but introduces a requirement that details of the founders and beneficiaries must be kept at an address in the IoM so that they will be available to the competent authorities.



- It is the case that some jurisdictions do not yet require a foundation's regulating powers to be filed. This may change as more countries undergo a 5<sup>th</sup> round evaluation by MONEYVAL.
  - The Bill does not come into force by Order.
  - Due to the removal of Part 3 (Foreign Trustee Duties) from the Bill, Part 7 (Additional record keeping requirements in respect of foundations) has been renumbered to become Part 6.
  - No other changes have been to this Part of the Bill.
- *Part 8 Power to make enquiries in relation to information submitted for registration*

The Cabinet Office has confirmed the following:

- The Department for Enterprise (DfE) can only do what the legislation allows and in this instance it allows the DfE to accept, reject or request a document. There are currently no specific powers for the DfE to make enquiries.
  - Without specific powers the DfE can ask but could be acting beyond its powers and the respondent would not have to reply.
  - MONEYVAL has recommended that the Companies Registrar should be able to take measures to establish the accuracy of the companies' registry.
  - The proposals should make no discernible difference to the way the Companies Registry operates. Ultimately, there is a statutory right of appeal within every Act from decisions of the DfE.
  - There is already a good working relationship between the Registry and its customers; anyone presenting time sensitive or unusually complex documents will generally contact the Registry in advance and provide a written summary of their expectations and needs.
  - Due to the removal of Part 3 (Foreign Trustee Duties) from the Bill, Part 8 (Power to make enquiries in relation to information submitted for registration) has been renumbered to become Part 7.
  - No other changes have been to this Part of the Bill.
- *New Part 8 - Financial Services Act 2008 amended*

The Cabinet Office has confirmed the following:

- A new section has been introduced at Part 8 of the Bill.
- It concerns an amendment to the Financial Services Act 2008 and is a new addition to the Bill which was not included in the consultation.
- The new provisions aim to bring added clarity to the powers of the IoM Financial Services Authority with regard to undertaking investigations into potential breaches of AML/CFT legislation by persons undertaking regulated insurance activities or regulated pensions activities.
- The IoM Financial Services Authority has conducted a short consultation with stakeholders which closed on 19 February 2018; two responses were received as a result of which the proposal shared with industry was amended.

## **7. Next steps**

A revised Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Bill 2018 is due to be introduced into the House of Keys on 6 March 2018 by Ms Bettison MHK, Member for the Department of Home Affairs.



## **Appendix 1 – List of groups, bodies and professional organisations consulted**

- Bodies representing financial services & designated non-financial businesses
- Chamber of Commerce
- Gambling Supervision Commission
- HM Attorney General’s Chambers
- Information Commissioner
- Isle of Man Financial Services Authority
- Isle of Man Government Departments
- Isle of Man Law Society
- Local Authorities
- Members of the Cabinet Office’s Anti-Money Laundering & Countering the Financing of Terrorism Advisory Group
- Members of the Department for Enterprise’s Financial Services Steering Group
- Society of Trust and Estate Practitioners Isle of Man
- Tynwald Members
- Unions
- Voluntary organisations / charities

## **Appendix II – List of respondents (permission given to publish these details)**

- ACSP
- Bill Mummery, Executive Director, Celton Manx Ltd
- Department of Environment, Food & Agriculture
- Dougherty Quinn
- Friends of the Hyperbaric Chamber
- Isle of Man Law Society
- Mario Ricciardi
- Stuart Nelson, Chair of the Chamber of Commerce Financial & Professional Services Committee
- Susan Grossey, Thinking About Crime Limited