



Isle of Man
Government

Reiltys Ellan Vannin



The Beneficial Ownership (Amendment) Bill 2020

Consultation Responses

Cabinet Office
Oik Counceil ny Shirveishee

December 2020

1. Introduction

- 1.1 On the 09 September 2020, the Cabinet Office launched a six-week public consultation on the draft Beneficial Ownership (Amendment) Bill 2020 (the Bill), ending on the 21 October 2020.
- 1.2 The Bill relates to the international obligations of the Isle of Man in respect of Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT). The provisions, amongst other things, aim to further improve the accuracy of the beneficial ownership database and meet international standards regarding timeliness.

2. Overall responses

- 2.1 The consultation was introduced to all relevant Government Departments, Law Enforcement Agencies, Statutory Boards, local authorities and other stakeholders such as the Isle of Man Financial Services Authority's (IOMFSA) licenceholders and industry professional bodies, through the AML/CFT Advisory Group¹.
- 2.2 The consultation attracted 15 responses in total, all received by email. The Cabinet Office welcomed all responses and considered each comment made in the final drafting of the Bill. The main areas of concern were the introduction of two additional exemptions to the filing of BO information and the time requirements placed on entities to collect the beneficial ownership details and to update the Companies Registry.
- 2.3 The table at Annex A shows the responses received and indicates whether they have been taken into account and the Bill amended, together with the consideration of the Cabinet Office where appropriate.
- 2.4 A list of respondents is also included at Annex B.
- 2.5 Typographical amendments and, in some cases, clarification amendments, have not been listed.

3. Next Steps

The Bill will now be the subject of Parliamentary scrutiny. The legislative process is explained on the Tynwald Website under 'How Bills become Law' on the following site:

<http://www.tynwald.org.im/about/legproc/Pages/default.aspx>

¹ A representative discussion forum that facilitates cooperation between Government, regulators and industry, in which key stakeholders can analyse and coordinate on prospective changes to AML regulations and guidance, in order to combat the misuse of the Isle of Man's financial systems by persons attempting to commit financial crimes.

Changes made to the Bill

In response to the feedback received, the following changes were made to the Bill.

Section 5(2) – Clause 5

You said	We did
<p>Four respondents expressed concern about the new proposed exemptions to the filing of beneficial ownership information with the Beneficial Ownership Register.</p> <p>It was suggested that any exemption to the register would weaken it by definition and encourage the use of the exemptions as loopholes by creating schemes to circumvent the Register.</p> <p>It was also felt that the accompanying notes did not provide a suitable explanation regarding the rationale for these exemptions, nor who is asking for them.</p> <p>One respondent also highlighted that the Act did not appear to provide for the removal of an entity now exempt from the register, including the process to be followed for that removal.</p>	<p>A much larger rewrite of legislation will take place in 2021/22 to make the Register open to public access, therefore consideration of exemptions will be addressed then.</p> <p>The proposed changes to section 5 were removed from the Bill.</p> <p>In light of the decision to remove the proposed amendments relating to section 5, this response falls away.</p>

Section 10(2)(a) – Clause 7

You said	We did
<p>One respondent suggested it would be unduly severe to criminalise a failure to notify a change to the beneficial owner or intermediate owner within one week, pursuant to the new proactive obligation of the provision.</p>	<p>After considering this response and several others relating to timing requirements, it was decided to leave section 10 as it is currently written.</p> <p>This provision has been deleted from the Bill.</p>

Sections 10 & 26A – Clauses 7 & 11

You said	We did
<p>Six respondents expressed their concerns regarding the timeliness in which beneficial ownership information must be submitted to the Beneficial Ownership Register, underlying that the obligation to notify within 7 days of the registration of a company and within 7 days of any changes in BO, to be unreasonable and insufficient.</p> <p>It was also felt that having three separate one week submission periods for the information to pass between the beneficial owners, to the legal entity, to the Nominated Office, to posting on the Register, was unrealistic.</p>	<p>It is currently accepted by international bodies that any information not updated within 21 days of a change, cannot be deemed “accurate and timely”. Therefore, a time limit has been imposed on the Nominated Officer to make postings upon the Register “as soon as reasonably practicable but in any event within 21 days”.</p> <p>This requirement will apply when the legal entity comes into operation, and when changes are subsequently made.</p> <p>The Bill has been redrafted accordingly.</p>

Section 20(5)(c) – Clause 8

You said	We did
<p>One respondent raised a concern in respect of the Nominated Officer’s responsibility, to make a statement of confirmation to the Register that the legal entity has complied with any regulations made by the Department for Enterprise (the Department) regarding identification of the registerable beneficial owner, if no regulations have been issued.</p>	<p>The Bill was amended to make it clear that this requirement only applies if the Department has issued a regulation(s).</p>

Section 20 – Clause 8

You said	We did
<p>One respondent asked whether:</p> <ul style="list-style-type: none"> (i) a Nominated Officer is always required to give written notice to the legal or beneficial owner if in fact they knew there was <u>no</u> Registerable Beneficial Owner (RBO) and; (ii) when a CSP files a <u>no</u> RBO, do they need to provide a statement to say that notice has been given to the Legal or Beneficial Owner. 	<p>The Bill was amended to make it clear that this requirement only applies if the Department has issued a regulation(s).</p>

Section 25 – Clause 10

You said	We did
<p>One respondent requested further clarity in respect of Section 25, which proscribes that the Department is not liable for the accuracy of information submitted.</p> <p>For example, if the Department removes information it considers false from the Beneficial Ownership Register, are they then obliged under the Act to advise the Nominated Officer of their actions.</p>	<p>The Bill was amended to include the provision as suggested; where the Department alters a legal entities information on the Register, it must notify the relevant Nominated Officer of such.</p>

Section 26A – Clause 11

You said	We did
<p>Eight respondents commented on the new, 'Requirement to notify errors in the Database'.</p> <p>Further clarification was requested regarding:</p> <ul style="list-style-type: none">(i) who was responsible for maintaining the database. Was this the Nominated Officer or the person accessing the database;(ii) how notification of an error would be made. Was this via entry on Database;(iii) if the Department were obliged to accept the notification of an error and;(iv) is there a requirement to notify the Department of minor clerical errors. <p>One respondent also questioned whether this new section should apply to IoM Government and public body employees given that this section, as currently drafted, would criminalise failure to comply.</p>	<p>Following the comments received, the section was redrafted. It is now a requirement to notify the Department of any errors known or suspected to be, materially incorrect.</p> <p>The Bill now also specifically refers to the legal entity and any third party that the legal entity nominates to access its information. Therefore, widening the definition from just the Nominated Officer alone.</p> <p>The Bill now requires that section 26A only applies to a legal entity to which the Beneficial Ownership Act 2017 applies, plus any third party they have authorised to have access to that legal entity's information.</p>

Changes not made to the Bill

Consideration was also given to the following suggestions, but it was not considered necessary to amend the Bill further in light of this feedback for the reasons stated.

You said	We did
One respondent requested that the IoM Government did not open the Beneficial Ownership Register to public access. Suggesting that, in doing so it would leave beneficial owners vulnerable to identity theft and targeted by criminals and foreign governments.	<p>The IoM Government has given a commitment to moving to a public register in 2023. This Bill does not in fact deal with making the register public and it will not change the current position. The aim of this Bill is to improve accuracy by ensuring, amongst other things, that information is entered onto the current Register in a timelier manner. Also that the Companies Registrar has the powers to remove information that is inaccurate or misleading. A consultation on a public register will take place next year ahead of any proposed changes to legislation.</p> <p>No changes were made to the Bill.</p>
You said	We did
One respondent suggested that a firm date be nominated for the introduction of a public register of beneficial ownership. Proposing that this would ensure there was no 'drift' in the necessary change towards a fully accessible public register.	<p>This Bill does not deal with aspects to make the Beneficial Ownership Register accessible to the public. The setting of a date for when the Register is to become fully accessible to the public will be part of the discussions and consultations planned for 2021, which will cover all the aspects required to create a public Register.</p> <p>No changes were made to the Bill.</p>

You said	We did
<p>Two respondents wished to clarify the interpretation of one week when considering the imposed period of 'one week' for the submission of the required information, stating it was not clear from the Interpretation Act whether this constitutes a calendar week or a working week.</p>	<p>The intention is that it will be seven consequential days including Saturdays and Sundays. When drafting legislation it is accepted that if a "week" is referred to, that it is interpreted and taken as meaning seven consequential days.</p> <p>No changes were made to the Bill.</p>

Section 3 – Clause 4

You said	We did
<p>One respondent noted that the Bill widens the parties who are able to have access to the information in the Beneficial Ownership Register, permitting access to both Government Departments and Statutory Boards to statistical data.</p> <p>The respondent suggested further clarity in respect of what is meant by statistical data and what steps are being taken to ensure GDPR is adhered to.</p>	<p>This section is intended to allow for the collection of numerical data for internal government use to report on the working of the Register. When drafting legislation, should a word not be specifically interpreted or in an interpretation Act, the normal dictionary definition would apply. Therefore, in this instances, the definition of "statistics" would be the presentation of numerical information.</p> <p>No changes were made to the Bill.</p>

Section 26A – Clause 11

You said	We did
<p>One respondent suggested that, if a person is accessing the database, it must be agreed in advance which entities they are looking at, rather than a carte blanche to review the information.</p>	<p>The Beneficial Ownership Act 2017 currently states who might access the database and to what purpose and extent. This clause does not alter that position.</p> <p>It is not clear if the response is in regards to when the Beneficial Ownership Register is made public, however this is outside the scope of this Bill.</p> <p>No changes were made to the Bill.</p>

You said	We did
One respondent felt the obligations of the Department should be made clear within the Act, similarly to the identified obligations of the Nominated Officer.	A number of obligations on the Department are included in the Act, including at section 30 and in Schedule 1. No changes were made to the Bill.

You said	We did
One respondent questioned whether the Beneficial Ownership Database kept an audit trail, which details amendments made to the information following notification of any identified errors, or would the errors effectively disappear from the system once accepted by the Department.	This is an operational/policy consideration and does not fall within the auspices of this Bill. No changes were made to the Bill.

Section 26A - Clause

You said	We did
One respondent observed that there is a new obligation to notify the Department within 7 days of an error(s) being identified by persons accessing the Register however, there is no mention of an intention from the Department to then correct errors identified or a timescale within which corrections will be made.	As the Department would have to investigate each report under this section, no strict timescales for response are legislated for or a definite intention that the Department will correct errors reported. The results of the investigation will dictate what actions the Department might take and when. No changes were made to the Bill.

Drafting Comments

You said	We did
A number of purely drafting points were raised such as adding in references to proposed new sections in other already existing sections.	All comments were considered, some incorporated and a number being made redundant after the Bill was redrafted following the consultation exercise.

Reponses Received

Chamber of Commerce, Financial and Professional Services Committee

Appleby (Isle of Man) LLC

DQ Advocates

IQ-EQ

Transparency International UK

John Atherton - Association of Corporate Service Providers

Justin Thacker - Church Action for Tax Justice

Steve Watson - Ocorian Trust (Isle of Man) Ltd

Matt Kuppers - London School of Economics and Political Science

Phil Craine

Steve Burrows - Chartered IT Consultant

2x Anonymous