

1. Introduction

In order to address several compliance deficiencies identified in the Island's Mutual Evaluation Report 2016, conducted by MONEYVAL, a small number of amendments are being recommended to the [Beneficial Ownership Act 2017](#), intended to improve the accuracy of the beneficial ownership database.

The changes identified will also contribute to the work that the Isle of Man is undertaking in relation to its [public commitment](#) made in June 2019, to delivering an effective public register of beneficial ownership of companies, through a three stage process, by 2023. The Cabinet Office is coordinating measures to deliver the IoM Government's commitment in consultation with the Department for Enterprise (DfE) and the Treasury Department.

2. Why we are consulting

The purpose of this consultation is to seek the views and where relevant, evidence to support those views, on the proposed amendments to the Beneficial Ownership Act 2017.

3. Consultation process

The consultation commences on 09 September 2020 and will run for a period of 6 weeks. Submissions with respect to the consultation must be submitted by no later than 5pm on Wednesday 21 October 2020.

For the convenience of the reader, attached with this consultation is a copy of the Beneficial Ownership Act 2017 showing the amendments that the Bill (if passed) will make.

Any questions can be sent to amlcft@gov.im.

Submissions with respect to the consultation can either be –

- Emailed to amlcft@gov.im; or
- Posted to the following address –

AML/CFT Policy Office, Cabinet Office,
3rd Floor Government Offices, Bucks Road, Douglas, IM1 3PN

4. Storage of personal data

Following the publication of the consultation summary, the Department will ensure that data is only retained as required and in line with GDPR.

5. Proposed Amendments

The Beneficial Ownership (Amendment) Act 2020 (the Bill) proposes various amendments to the Beneficial Ownership Act 2017, with the main purpose being to improve the accuracy of the data held on the beneficial ownership register and also to permit the extraction of anonymised data by relevant authorities in order to assist with international reporting obligations.

An Amendment is proposed to Section 3 (Interpretation) and the definition of "Department" to "the Department" in reference to the Department for Enterprise. When "Department" is used throughout the Beneficial Ownership Act 2017 it is a reference to the Department of Enterprise only. However, the change to "permitted purpose" made by the Bill refers to "a Department" as a general term. The amendment to "Department" is to ensure there is no doubt that the definition in "permitted purpose" is different to that used throughout the rest of the Beneficial Ownership Act 2017.

Section 5 of the Act is to be amended to provide a clearer understanding in relation to subsidiaries. The paragraph extending the exemption to a subsidiary of a company listed on a stock exchange, has been moved to the end of the exemptions and also includes subsidiaries of collective investments schemes and limited partnerships.

Amendments are proposed to section 9 (Duty of legal owners) of the Act to include a requirement that a legal owner must, within one week of incorporation of the legal entity, supply his or her required identification details to the nominated officer. This is in response to the deficiency noted in the IoM's MER (Recommendation 24) that, *"It cannot be determined that accurate, complete and current beneficial ownership information will be available for 1931 companies, limited partnerships or general partnerships."* The Act currently requires relevant beneficial ownership details to be provided within three months however MONEYVAL considers this too long to ensure accuracy of the details held. It was felt that at the point of incorporation all such details should be correct, therefore a week's period of notification to the nominated officer is considered sufficient.

The amendments to section 10 (Duty of beneficial owners and intermediate owners to assist) are twofold; firstly it amends the section title to include that the various owners must 'notify' as well as 'assist', thus reflecting that there is now a pre-active requirement to notify as well as a reactive element. It secondly amends the section to clarify the requirements of a beneficial ownership or intermediate owner as to what he or she must now notify to a legal owner. It also adds in time limits in which to meet these requirements. The time limit of one week harmonises with the time limit proposed under the new requirements in section 9.

Several amendments are proposed for Section 20 (compulsory submission of registrable beneficial ownership information to the Department). It firstly gives the DfE the power to issue regulations on the actions required by the nominated officer. This will help the authorities to further guide industry if they indicate they have issues on what is considered to be "reasonable steps", or if there are future changes in international requirements. The amendment also changes the actions required by the nominated officer to obtain information in the circumstances prescribed; from an option, to a requirement because the nature of when such a notice is issued, involves legal requirements not currently being adhered to.

An additional requirement is also added when the nominated officer supplies information that an entity has no registrable beneficial owners, to the DfE. It must be certified that if any departmental regulations on taking "reasonable steps" to ascertain that position have been issued, they have been adhered to. It also requires the nominated officer to certify if they have had to issue a notice to ascertain that position, to ensure the data submitted to the register is accurate. Lastly, it adds into subsection 7 that details are to be submitted to the DfE within time limits which we believe will meet international standards regarding timeliness.

Amendments to section 21 (voluntary submission of non-registrable beneficial ownership information) add in requirements that, if a voluntary submission is made, it is accompanied by the same information as is stipulated for registrable beneficial ownership.

In section 25 (department not liable for accuracy of information submitted), a new subsection is to be introduced which gives the DfE the power to make enquiries to verify the information submitted and remove any information from the database it considers to be false, inaccurate or misleading. It also provides that the DfE may make regulations to give effect to these powers. These additional powers are necessary for the IOM to meet the international requirements to identify and verify the information on its database to ensure it is timely and accurate. The power for the DfE to make such enquiries is comparable to existing powers in the Companies Act 1931; Companies Act 2006; Foundations Act 2011; Limited Liability Companies Act 1996 and the Partnership Act 1909.

A new section 26A (Requirement to notify errors in the Database) is to be incorporated, creating a new requirement that a person accessing the database must notify the Department if in doing so, they consider any entry to be incorrect. Failing to make such notification within one week is an offence. This mirrors requirements put in place by the UK and is to help ensure the accuracy of the information on the database.

Amendments to Schedule 1 (oversight) to include minor references and changes altered by the amendments in the Bill. It also amends the offence, which may be subject to a civil penalty, of furnishing information that is false, inaccurate or misleading, stipulating that the furnishing of this information must have been knowingly or recklessly carried out.

6. What happens next?

We will review results from the consultation which will be used to inform the final version of the legislation. We will liaise further with respondents as necessary. A consultation summary will be produced and made available on the [Consultation Hub](#).