



**Isle of Man**

*Ellan Vannin*

**AT 5 of 2016**

**FINANCIAL INTELLIGENCE UNIT ACT  
2016**





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## FINANCIAL INTELLIGENCE UNIT ACT 2016

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**Isle of Man***Ellan Vannin*

## FINANCIAL INTELLIGENCE UNIT ACT 2016

*Signed in Tynwald:* 19 April 2016  
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**AN ACT** 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

#### 1 Short title

The short title of this Act is the Financial Intelligence Unit Act 2016.

#### 2 Commencement

- (1) This Act, except section 1 and this section, comes into operation on such day or days as the Department of Home Affairs (“**DHA**”) may by order appoint.<sup>1</sup>
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the **DHA** to be necessary or expedient.

#### 3 Interpretation

- (1) 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.

(2) 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.

- (3) The DHA may by order amend the definition of financial crime in subsection (1).
- (4) Before it makes an order under subsection (3), the DHA must consult the FIU and the Board.
- (5) An order under subsection (3) must not come into operation unless it is approved by Tynwald.

## **PART 2 — FINANCIAL INTELLIGENCE UNIT**

### **4 Establishment of Financial Intelligence Unit**

- (1) The Financial Intelligence Unit (“**FIU**”) is established as a body corporate.
- (2) Schedule 1, which makes provision about the constitution, functions, Director, Board and staff of the FIU and other matters relating to it, has effect.

- (3) 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).
- (4) Before it makes an order under subsection (3), the DHA must consult the FIU and the Board.
- (5) An order under subsection (3) must not come into operation unless it is approved by Tynwald.

## 5 FIU's general functions

- (1) The FIU has the functions of —
  - (a) receiving, gathering, analysing, storing and sharing information about financial crime (whether in the Island or elsewhere);
  - (b) assisting with the prevention and detection of crime, and in particular, financial crime (whether in the Island or elsewhere);
  - (c) cooperating with law enforcement agencies (see section 10); and
  - (d) contributing to the reduction of crime, and in particular, financial crime and to the mitigation of its consequences.
- (2) The FIU also has such other functions as are conferred on it under this Act (including regulations made under section 32) or under any other statutory provision.

## 6 FIU's general powers

P2005/15/5

- (1) The FIU may in pursuance of any of its functions —
  - (a) request the Attorney General to recommend to the 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 10), act in support of any activities of that agency;
  - (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.
- (2) The “appropriate person” for the purposes of section 6(1)(a) 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.
- (3) The FIU also has such other powers as are conferred on it under this Act (including regulations made under section 32) or under any other statutory provision.
- (4) 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.

## **7 Powers of FIU as to information relating to financial crime**

P2005/15/3

- (1) The FIU may share information in its possession or control relating to financial crime 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 10); or
  - (e) such other persons (in the Island or elsewhere) as it considers appropriate in connection with any of its functions.
- (2) Subsection (1) is subject to sections 23 (disclosure of information by FIU) and 25 (restrictions on further disclosure).

## **8 Operational control**

- (1) 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.
- (2) 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.
- (3) This section does not affect the generality of paragraph 1 of Schedule 1.

## **9 Codes of practice**

P2005/15/10

- (1) The DHA may issue codes of practice relating to the exercise by the FIU of any of its functions.
- (2) 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.



- (3) 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.

## 10 Interpretation of Part 2

- (1) 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).
- (2) The DHA may by order amend a definition in subsection (1).
- (3) Before it makes an order under subsection (2), the DHA must consult the FIU and the Board.
- (4) An order under subsection (2) must not come into operation unless it is approved by Tynwald.

## PART 3 — SPECIAL POWERS OF DESIGNATED FIU STAFF

### 11 Designation of FIU staff as persons having powers of constable etc

P2005/15/43

- (1) 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.
- (2) 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.
- (3) Subsection (2) applies subject to any modification or withdrawal of the designation by the FIU.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.

**12 Person having powers of a constable**

P2005/15/46

- (1) This section applies to a member of the staff of the FIU who is for the time being designated under section 11 as a person having the powers of a constable.
- (2) The designated person has all the powers and privileges of a constable in the Island.
- (3) 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.
- (4) The designated person also has any powers exercisable by virtue of subsection (5).
- (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.
- (6) Subsections (2) to (5) have effect subject to any limitation specified in the designation in accordance with section 11(2).
- (7) 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.

**13 Person having powers of officer of customs and excise**

P2005/15/48

- (1) This section applies to a member of the staff of the FIU who is for the time being designated under section 11 as a person having the powers of an officer of Customs and Excise.
- (2) The designated person has the same powers as an officer of Customs and Excise.
- (3) If any of those powers, 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.
- (4) The designated person also has any powers exercisable by virtue of subsection (5).
- (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.

- (6) Subsections (2) to (5) have effect subject to any limitation specified in the designation in accordance with section 11(2).
- (7) 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.

#### **14 Evidence of designation**

P2005/15/50(1)

If a designated person —

- (a) exercises any power in relation to another person in reliance on the designation under section 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.

#### **15 Assaults, obstruction or deception in connection with designated persons**

P2005/15/51

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) 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).

## 16 Modification of enactments: designated persons

P2005/15/52

- (1) 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.
- (2) 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.
- (3) Subsection (2) does not affect the generality of subsection (1).
- (4) In this section any reference to designated persons includes a reference to any description of such persons.
- (5) 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.
- (6) An order under this section must not come into operation unless it is approved by Tynwald.

## 17 Interpretation of Part 3

P2005/15/54

- (1) 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.

- (2) 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

### 18 Power to gather additional information

- (1) 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).
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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).

## 19 Criteria for making a request

- (1) 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.
- (2) 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; or
  - (c) the particulars of specified transactions or activities which have been carried out during a specified period.
- (3) The DHA may by order amend subsection (2) to vary the categories of information that may be sought.
- (4) Before it makes an order under subsection (3), the DHA must consult the FIU and the Board.
- (5) 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.

## 20 Offence for failing to comply with request

- (1) A person who fails to comply with a request under section 18(4) commits an offence.
- (2) 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.

- (3) A person who wilfully obstructs another person in complying with a request under section 18(4) commits an offence.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) The officer, as well as the body, is guilty of the offence and is liable to the penalty provided for the offence.
- (8) 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 section 74 of the *Companies Act 2006*), the registered agent.

## 21 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*<sup>1</sup>;

“**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*;

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<sup>1</sup> SD 2015/0102



“**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).

## PART 5 — USE AND DISCLOSURE OF INFORMATION

### 22 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.

### 23 Disclosure of information by FIU

P2005/15/33

- (1) 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)).
- (2) 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).

### 24 Disclosure of information to FIU

P2005/15/34

- (1) 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.
- (2) 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).

## 25 Restrictions on further disclosure

P2005/15/35

- (1) 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.
- (2) 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.

## 26 Offence for failing to comply with restriction on further disclosure

- (1) A person who fails to comply with section 25 commits an offence.
- (2) A person guilty of an offence under subsection (1) 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.
- (3) 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.
- (4) The officer, as well as the body, is guilty of the offence and is liable to the penalty provided for the offence.
- (5) 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 section 74 of the *Companies Act 2006*), the registered agent.

**27 Amendment of enactments: disclosure of information**

- (1) 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.
- (2) But nothing in this section authorises the amendment of the *Data Protection Act 2002*.
- (3) 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.
- (4) An order under this section must not come into operation unless it is approved by Tynwald.

**28 Interpretation of Part 5**

- (1) 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.
- (2) Before it makes an order under subsection (1)(d), the DHA must consult the FIU and the Board.
- (3) 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****29 Prosecution of offences relating to financial crime**

P2005/15/38

- (1) The Attorney General may institute criminal proceedings concerning an offence or alleged offence relating to financial crime.
- (2) 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.
  - (3) 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 or warrant) 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.

### 30 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.

### 31 General duty to assist FIU

P2005/15/37

- (1) It is the duty of every person or body to which this section applies to assist the FIU in the exercise of its functions.
- (2) 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.
- (3) The DHA may by order amend subsection (2) to vary the persons or bodies to which this section applies.
- (4) Before it makes an order under subsection (3), the DHA must consult the FIU and the Board.

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

### **32 Regulations**

- (1) 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.
- (2) Regulations under subsection (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.
- (3) The power conferred by subsection (2)(e) includes the power to modify, adapt or amend any provision of this Act or any other enactment.
- (4) Before it makes regulations under subsection (1), the DHA must consult the FIU and the Board.
- (5) Regulations under this section must not come into operation unless approved by Tynwald.

### **33 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.

### **34 Transfer of staff and property**

- (1) The organisation known as the Financial Crime Unit of the Isle of Man Constabulary ceases to exist.
- (2) 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.

### 35 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.

### 36 Amendments

- (1) The Acts specified in Schedule 3 are amended in accordance with that Schedule.
- (2) 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.
- (3) In this [section]<sup>2</sup>, “**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.

## SCHEDULE 1

## Section 4

## FINANCIAL INTELLIGENCE UNIT

## PART 1 – FIU PROCEEDINGS

**1 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.

**2 Incidental powers**

- (1) 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.
- (2) But the powers conferred by sub-paragraph (1) may be exercised only with the consent of the Board.
- (3) 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.

**3 Work**

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

**4 Annual plans**

- (1) 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**”).
- (2) 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.
- (3) 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.
- (4) 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.
- (5) The DHA must lay a copy of the annual plan before Tynwald.

## 5 Annual reports

- (1) 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**”).
- (2) 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.
- (3) The FIU must arrange for the annual report to be published in such manner as it considers appropriate.
- (4) 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.
- (5) The DHA must lay a copy of the annual report before Tynwald.

## PART 2 — DIRECTOR

### 6 The Director

- (1) 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.
- (2) 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.



## 7 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.

## 8 Delegation of functions of Director

- (1) 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).
- (2) 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.

## 9 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

## 10 Membership of the Board

- (1) 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.
- (2) A member of the Board ceases to be such a member on ceasing to hold the office specified in sub-paragraph (1).
- (3) 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.
- (4) 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.
- (5) The DHA may by order amend sub-paragraph (1) to provide for a different composition of the Board.

- (6) Before it makes an order under sub-paragraph (5), the DHA must in any event consult —
  - (a) the Board; and
  - (b) the Council of Ministers.
- (7) An order under subsection (5) must not come into operation unless it is approved by Tynwald.

## 11 Functions of the Board

- (1) 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.
- (2) 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).

## 12 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

### 13 FIU's staff

- (1) The FIU may have such employees as it appoints.
- (2) The FIU may make arrangements for persons to be seconded to it to serve as members of its staff.
- (3) Persons appointed by the FIU under sub-paragraph (1) 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 section 3(1) of the *Public Services Commission Act 2015*).
- (4) Persons seconded to the FIU under sub-paragraph (2) are to be treated as employees of the Public Services Commission whilst they remain so seconded and, in relation to them, the FIU is to be treated as the stationed employer (within the meaning of the *Public Services Commission Act 2015*).
- (5) References in any enactment to members of staff of the FIU are (unless the context otherwise requires) references to persons who either are appointed by the FIU under sub-paragraph (1) or have been seconded to the FIU under sub-paragraph (2) to serve as members of its staff.

### 14 Remuneration and pensions of employees

- (1) Persons appointed by the FIU under paragraph 13(1) are employed on such terms and conditions as the Board, with the approval of the DHA, determines.
- (2) Before requesting approval, the Board must consult the Public Services Commission.
- (3) 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.

### 15 Complaints

- (1) 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.
- (2) 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.

**16 Employment provisions – designated persons who were constables**

- (1) 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.
- (2) For the purposes of the following provisions of the *Employment Act 2006*, a person designated under section 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.
- (3) 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).
- (4) 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”.
- (5) 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

### 17 Duty of Board to report to DHA

- (1) The DHA may require [the]<sup>3</sup> 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.
- (2) A report submitted under sub-paragraph (1) must be in such form and be undertaken by such person or body as is so specified.
- (3) 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.
- (4) 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.

### 18 Inspections

- (1) 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.
- (2) 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.
- (3) Before arranging an inspection the DHA must consult the Board.
- (4) The report of inspectors must be in such form as the DHA directs.
- (5) The DHA must arrange for every report which it receives under this paragraph to be published in such manner as it considers appropriate.

- (6) 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.
- (7) The DHA must send a copy of the published report to the FIU and the Board.
- (8) The FIU must —
  - (a) prepare comments on the published report; and
  - (b) send them to the DHA and the Board.
- (9) 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.
- (10) 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.

## 19 Power to direct remedial action

- (1) 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.
- (2) 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.
- (3) 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) [Amended section 11 (disclosure of information: duty).]
- (3) [Amended section 12 (disclosure of information: permission).]
- (4) [Amended section 13 (co-operation with police).]
- (5) [Amended section 14 (failure to disclose: regulated sector).]
- (6) [Amended section 15 (protected disclosures).]
- (7) [Amended section 75(1) (interpretation).]
- (8) [Amended section 76 (index of defined expressions).]

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

- (1) The *Personal Liability (Minsters, Members and Officers) Act 2007* is amended as follows.
- (2) [Amended section 3(2) (liability of designated persons).]

**3 Proceeds of Crime Act 2008**

- (1) The *Proceeds of Crime Act 2008* is amended as follows.
- (2) [Amended section 142(5)(b) (failure to disclose: regulated sector).]
- (3) [Amended section 143(5) (failure to disclose: nominated officers in the regulated sector).]
- (4) [Amended section 144(5) (failure to disclose: other nominated officers).]
- (5) [Amended section 145(2)(a) (tipping off: regulated sector).]
- (6) [Amended section 151 (appropriate consent).]
- (7) [Amended section 152 (nominated officer: consent).]
- (8) [Amended section 153(4)(a) (protected disclosures).]
- (9) [Amended section 154(1)(a)(i) (authorised disclosures).]
- (10) [Amended section 156 (threshold amounts).]
- (11) [Amended section 158 (interpretation of Part 3).]
- (12) [Amended section 211 (disclosure of information in connection with the exercise of functions).]

**4 Interpretation Act 2015**

- (1) The *Interpretation Act 2015* is amended as follows.
- (2) [Amended paragraph 1 of the Schedule (definitions for all Manx legislation).]

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> ADO – remaining provisions in operation 22 April 2016 [SD2016/0148].

<sup>2</sup> Editorial correction.

<sup>3</sup> Editorial correction.