

FOUNDATIONS (AMENDMENT) BILL 2025

EXPLANATORY NOTES

These notes are circulated for the information of Members.

Members who have questions regarding the Bill are invited to contact:

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INTRODUCTION

1. These explanatory notes relate to the Foundations (Amendment) Bill 2025. They have been prepared by the Department for Enterprise (“the Department”) in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill.
3. An Impact Assessment of the Bill has been prepared and is annexed to these notes.

OVERVIEW OF THE BILL

4. An Isle of Man Foundation, established under the Foundations Act 2011 (“the 2011 Act”), is a distinct legal entity that combines characteristics of both companies and trusts, and is therefore often described as a hybrid of the two. Like a company, it has separate legal personality, allowing it to own property, enter into contracts and undertake legal proceedings in its own name. However, unlike a company, it has no shareholders or members with ownership interests. Instead, it is created to pursue specified objects for the benefit of one or more beneficiaries, or for a particular purpose, which reflects the trust concept. The foundation is administered by a council, which manages its affairs and assets in furtherance of those objects, and, in some instances, is overseen by an enforcer, whose role is to ensure that the council acts in accordance with the foundation’s stated purposes and statutory obligations.
5. The Bill builds upon a robust and proven legal framework of the 2011 Act, adapting it to accommodate a new asset class – a data asset. This approach is more efficient and coherent than the creation of an entirely new legal vehicle.
6. The principal objectives of the Bill are—
 - (a) to create a legal framework for “data stewardship” services;
 - (b) to provide legal certainty regarding the status of data as an asset; and
 - (c) to enable data to be held, managed and transacted within a trusted environment.

LEGAL FOUNDATIONS

7. The Bill concerns the creation of a data asset and the conferral, upon its successful registration, of a statutory property right in respect of that asset in the Isle of Man. Drawing upon the recent White Paper¹ published by the Law Commission of England and Wales (“the Law Commission”), and having regard to legal advice obtained from Pinsent Masons

¹ “Digital assets: Final report” presented to Parliament pursuant to section 3(2) of the Law Commissions Act 1965 Ordered by the House of Commons to be printed on 27 June 2023. Law Com No 412.

LLP², the Bill provides that a thing is not precluded from being the subject of personal property rights merely because it does not fall within either of the two categories of personal property traditionally recognised at law.

These traditional categories comprise—

(a) things in possession, which relate primarily to tangible property; and

(b) things in action, which consist of personal property enforceable only by legal action and generally concern intangible property.

8. In the White Paper, the Law Commission recommended statutory confirmation that a thing should not be denied recognition as an object of personal property rights solely because it is neither a thing in possession nor a thing in action. The traditionally recognised categories were developed in an era preceding the advent of digital assets. The Commission further observed that the courts have been moving towards recognising that a thing may constitute personal property even though it falls outside both traditional categories. This recommendation reflects the increasing economic significance of digital information and emerging forms of assets which do not conform to conventional classifications of personal property.

POLICY AND LEGAL BACKGROUND

9. The policy underpinning this Bill is informed by the Isle of Man Government's strategic objective to support the development of the data industry, as identified in Isle of Man Economic Strategy (published in November 2022)³, and further developed in the report *Realising Data Industry Opportunities* (KPMG, 17 February 2023)⁴. Both reports considered the Island's potential to establish itself as a global centre for data activity, with the KPMG report examining how to balance economic opportunity with a "gold standard" regulatory framework.
10. The report observed that a "trusted intermediary role... could be a natural extension of fiduciary services, which are a mainstay of the Island's existing economy". The Bill gives legislative effect to that concept by creating a statutory framework for the provision of "data intermediation" services, which form a component of the wider "data economy" that the Bill seeks to foster on the Island.
11. Data, and the manner in which it is governed, remains a central issue of the information age. Although data represents one of the most significant assets of the modern economy, its legal status as a form of property is presently uncertain. Organisations face increasing legal and financial risk in navigating the complex landscape of international compliance requirements, including those arising under the General Data Protection Regulation (GDPR). The absence of a clear legal framework for data governance and ownership contributes to uncertainty, deters investment, and constrains the effective use and management of data assets.
12. The central policy objective of the Bill is to address this legal ambiguity by providing a clear statutory definition of data as an asset, together with associated property rights to support

² Advice Note_ Digital Isle of Man_ Data Assets as property (158874044.1) provided by Pinsent Masons LLP and is appended to the Explanatory Notes as an annex.

³ Isle of Man Economic Strategy 10-15 YEARS Building a secure, vibrant and sustainable future for our Island: November 2022, p.37

⁴ "Realising Data Industry Opportunities" by KPMG Advisory issued on 25 April 2023 and is appended to the Explanatory Notes as an annex.

a transparent and trusted data economy. The legislative framework is intended to unlock the economic potential of data by enabling it to be securely held, valued, licensed and used as an asset within a trusted environment.

13. As mentioned above, the law traditionally recognises two categories of personal property, which can be divided into real property (interests in land) and personal property (interests in other things).
14. Therefore, the existing legal structures are often ill-suited to hold, manage and govern digital assets, including data. Data Trusts, for example, typically lack separate legal personality, while standard corporate structures are not required to adhere to a legally embedded governance framework and lack a clear mechanism for defining data as an asset. The data asset itself is not defined and leaves the large portion of the assets to exist in legal uncertainty.
15. For businesses operating internationally, navigating the multitude of evolving compliance requirements is a significant challenge. A jurisdiction that can offer a clear, secure and efficient home for data would have a clear advantage in attracting the economic activity associated with it.
16. It is also important that the law keeps pace with technological developments and can recognise and protect new types of assets. This ensures that people and businesses that own, use and transact with digital assets can do so confidently, allowing the possibilities of these new technologies to flourish.
17. In this context, personal property rights are important for many reasons. They are important in cases of bankruptcy or insolvency, in cases where objects of property rights are interfered with or unlawfully taken, and for the legal rules concerning succession on death. They are also important for the proper characterisation of numerous modern and complex legal relationships, including custody relationships, collateral arrangements and structures involving trusts.
18. The Bill addresses those gaps by amending the 2011 Act to create a subcategory of a foundation - the Data Asset Foundation. This is a registered foundation with separate legal personality, subject to a new, enhanced statutory regime set out in the new Part 7 of the Act.
19. The effect of the Bill's provisions is to:
 - a. amend the 2011 Act to establish the Data Asset Foundation as a distinct type of foundation;
 - b. insert a new Part 7 into the 2011 Act, which provides the specific legal framework for Data Asset Foundations;
 - c. create a statutory personal property right in "data assets" that are fully registered to a Data Asset Foundation, thereby overcoming the common law position that pure information is not property;
 - d. establish a Data Asset Registrar and a public Data Asset Register to provide legal certainty and transparency regarding the status and high-level attributes of registered data assets; and
 - e. mandate a comprehensive Data Governance Framework and an independent assurance regime to ensure data assets are managed responsibly, ethically, securely and in compliance with applicable laws.
20. The core of the Bill is the creation of a statutory property right. This right does not exist until, and is only vested in the Data Asset Foundation after, the data has been:

- a. formally "dedicated" to the Data Asset Foundation via a legal instrument (the "data asset dedication instrument");
- b. audited by an "Accredited Assurance Provider" against a new "Data Governance Framework"; and
- c. recorded as "fully registered" on the new "Data Asset Register".

This process vests a clear, registrable personal property right in the Data Asset Foundation, allowing the data asset to be held, valued, licensed and used as security, all within a framework of mandatory governance and independent oversight. The framework is designed to unlock the economic and social value of data by creating a trusted, legally certain environment for its governance and value creation.

- 21. The legislation is both timely and strategic: the KPMG report identified the establishment of a trusted data framework as a key opportunity for the Island. By acting at this stage, the Isle of Man positions itself as a "first mover" jurisdiction capable of offering a "gold standard" legal and regulatory environment attractive to high-value digital enterprises seeking certainty and trust.

FINANCIAL AND MANPOWER IMPLICATIONS

- 22. The Bill will have financial and manpower implications for the public purse.
- 23. These implications arise from the establishment, operation and oversight of the new regime, including:
 - a. the establishment and ongoing maintenance of the public Data Asset Register;
 - b. the appointment and resourcing of the Data Asset Registrar and their office; and
 - c. the establishment and supervision of the accreditation and registration regime for Accredited Assurance Providers.
- 24. It is anticipated that some of these costs may be offset by fees prescribed in regulations.

DATA PROTECTION AND PRIVACY

- 25. The Bill has been drafted on a "privacy by design" basis, ensuring that the creation of a property right in a data asset does not override existing data protection legislation.
- 26. The Bill does not diminish or extinguish any rights held by data subjects under applicable laws, such as the Data Protection Act 2018 (which applies the GDPR as Manx law). The property right created by the Bill subsists in the "data asset" as a registered, intangible asset, not in the personal data of individuals within it. The Data Asset Foundation's rights remain subject to the rights of data subjects.
- 27. This principle is enforced through several key mechanisms in the Bill:
 - a. New section 69(a) mandates that the Data Governance Framework must set "minimum requirements for data stewardship, including (...) technical, ethical and security standards in respect of data assets".
 - b. New section 69(b) explicitly requires the framework to "specify the role of the Isle of Man Information Commissioner in relation to the supervision of data asset foundations" in respect of their utilisation of personal data.

- c. New section 69(d) further enables the Department to make provision about any other matters it considers necessary or expedient, ensuring that data protection compliance and the rights of data subjects can be addressed within the framework.
 - d. New section 85 explicitly prohibits a Data Asset Foundation from utilising a data asset without a valid data asset accreditation. This accreditation, provided by an Accredited Assurance Provider (AAP), will include an assessment of the Data Asset Foundation's compliance with the data governance framework, including its data protection obligations.
28. Therefore, a Data Asset Foundation cannot lawfully utilise a data asset containing personal data without demonstrating, to an independent auditor, that it is doing so in full compliance with data protection law and under the supervision of the Information Commissioner.

HUMAN RIGHTS

29. The provisions of the Bill are considered to be compatible with the Convention Rights as applied to the Isle of Man by the Human Rights Act 2001.
30. As detailed in the section above, the framework is designed to operate in full compliance with existing data protection laws, preserving the rights of data subjects.
31. Additionally, the Bill engages two primary rights:
- a. **Article 8 (Right to private and family life):** This is engaged where a data asset contains personal data. As detailed in the section above (*Data Protection and Privacy*), the Bill's framework is designed to be subordinate to, and compliant with, existing data protection law, ensuring the rights of data subjects are preserved.
 - b. **Article 6 (Right to a fair trial):** This Article includes the right of access to a court for the determination of a person's civil rights and obligations. The Bill creates new civil rights (specifically, the statutory property right in a data asset under new section 80) and obligations (such as the duties of the Data Asset Foundation's council under new section 87).
32. The Bill ensures compliance with Article 6(1) by explicitly providing for access to the courts. New section 90 (*Applications to the High Court relating to data asset foundations*) grants the High Court a specific jurisdiction to hear and determine disputes relating to Data Asset Foundations, including the utilisation of data assets and the rectification of the Data Asset Register.
33. While new section 91 (read together with section 90) allows for regulations to establish alternative dispute resolution (ADR) processes, such as mediation or arbitration, these mechanisms are supplementary. They do not restrict the ultimate right of access to the High Court for a final determination of civil rights, which remains unfettered.

COMMENTARY ON CLAUSES

34. Clauses 1 and 2 contain, respectively, the short title of, and the commencement provisions for, the resulting Act.
35. Clause 3 provides for the amendment of the Foundations Act 2011 ("the 2011 Act") by the resulting Act so as to provide for data asset foundations in Manx legislation.

36. Clause 4 amends section 3 of the 2011 Act to widen the definition of assets so as to include, for a data asset foundation, data assets. It also amends the definition of “person with sufficient interest” to include a data enforcer and the data asset registrar in respect of a data asset foundation.
37. Clause 5 amends section 13 of the 2011 Act (the foundation rules – registered agent). It repeals subsection (3), which currently precludes a registered agent’s retirement or removal taking effect until immediately before the appointment of a new class 4 licenceholder as registered agent.
38. Clause 6 amends section 28 of the 2011 Act (foundation must have a registered agent). This clause makes it a criminal offence for a foundation to fail to have a registered agent appointed in accordance with subsection (1) or (2)(a).
39. Clause 6A inserts a new section 28A (resignation of registered agent). This clause inserts a new section 28A into the Act, establishing a formal statutory procedure for the resignation of a registered agent. A registered agent wishing to resign must give not less than 8 weeks’ written notice to both the foundation and the Registrar, specifying the intended date of resignation, and must send that notice to the foundation at its business address and to at least two members of the council at their last known addresses. Within one week of giving notice the registered agent must file a copy with the Registrar. If the foundation has not appointed a new registered agent by the specified date, the resigning agent may file a final notice of resignation and the resignation takes effect when the Registrar enters it in the register. A registered agent who resigns in contravention of this section commits an offence.
40. Clause 7 amends the heading to Part 6 of the 2011 as, in light of the inclusion of a new Part 7, these will not be closing provisions.
41. Clause 8 inserts a new Part 7 into the 2011 Act to provide for data asset foundations, comprising new sections 67 to 93. Each proposed new section is considered below.

Commentary on New Part 7

41. New section 67: Interpretation. This new section defines the key terms which apply throughout the new Part 7. Notable definitions include:
 - a. "data asset" defines the asset as data that is dedicated to a data asset foundation, subject to a dedication instrument and "fully registered" on the data asset register. This links the existence of the statutory asset directly to the registration process.
 - b. "data asset accreditation" means the formal accreditation issued by an AAP, which is a prerequisite for full registration.
 - c. "data asset registrar" means the person or body appointed by the Department to maintain the register.
 - d. "data governance framework" means the comprehensive framework of standards and requirements to be established by regulations.
 - e. "dedicate" means the act of transferring or granting specified rights and permissions in data to the data asset foundation.
 - f. "utilising" introduces a broad term defining what a data asset foundation may do with a data asset, including holding, managing, processing and exploiting it.
42. New section 68: Application for establishment of a data asset foundation. This section provides the requirements for a foundation to be a data asset foundation. Its instrument must declare it as such, and its objects must relate to "utilising its data assets". Subsection

(4) makes it void for any foundation that is *not* a data asset foundation to purport to have a data asset dedicated to it.

43. New section 69: Data governance framework. This section mandates the Department to establish a data governance framework by regulations. This framework is a cornerstone of the Bill, setting minimum standards for data stewardship, security and ethics, and specifying the role of the Information Commissioner regarding personal data.
44. New section 70: Data valuation framework. This section permits the Department to establish a data valuation framework by regulations, which can be used to assign a value to a data asset. Where no such framework applies, the council of the foundation may determine the basis of valuation for that asset.
45. New sections 71 and 72: Foundation instrument. Section 71 requires a data asset foundation's name to end in "Data Asset Foundation" or "DAF". Section requires the principal objects of a data asset foundation to relate to the utilisation of its data assets. Notably, subsection (3) disapplies section 36(3) of the 2011 Act for data asset foundations. This lifts the preclusion on data asset foundations engaging in commercial trading that is not incidental to the attainment of their objects, enabling such entities to commercialise data assets directly.
46. New sections 73, 74 and 75: Foundation rules. These sections require the data asset foundation's rules to incorporate requirements from the data governance framework and detail the council's new responsibilities under section 87. The Department may also prescribe model foundation rules.
47. New section 76: Data asset dedication instrument. This section provides for the formal legal instrument used to dedicate data to the data asset foundation. Regulations must prescribe its form, and it must detail the data, the rights being transferred and any limitations.
48. New section 77: The data asset registrar and the data asset register. This section mandates the Department to appoint a Data Asset Registrar, who is responsible for establishing and maintaining the public Data Asset Register.
49. New sections 78 and 79: Application and provisional registration. These sections set out the two-stage process for registration. Section 78 governs the initial application by the data asset foundation's council. Section 79 provides for provisional registration upon acceptance of the application.
50. New section 80: Completion of registration. This section details the final stage of registration. To achieve full registration, the data asset foundation must submit a data asset accreditation from an accredited assurance provider within a prescribed time. Subsection (4) vests a personal property right in the data asset in the data asset foundation upon full registration, notwithstanding that the asset is neither a thing in possession nor a thing in action.
51. New section 81: Disposal or reversion of data assets upon removal from data asset register. This section governs disposal or reversion of a data asset when it is removed from the register. It provides a clear priority order: first, in the manner specified in the data asset dedication instrument; second, as specified in the foundation rules; third, by reversion to the dedicator (with the personal property right being extinguished); and finally, as bona vacantia. The personal property right vested under section 80(4) is extinguished upon removal of the data asset from the register.
52. New section 82: Equivalent data registers. This section enables the Department, by regulation, to recognise data asset registers in other jurisdictions as equivalent. This

facilitates cross-border recognition and simplifies the registration of assets already registered on a trusted foreign register (if such exist in the future).

53. New section 83: Updating the register. This section provides the process for correcting ("rectifying") the register. It places a duty on the data asset foundation council and the Data Enforcer to notify the registrar of any mistakes.
54. New section 84: Accredited assurance providers. This section provides for the "AAPs" who perform the independent data asset accreditations. The Department is required to establish a regime by regulation for their accreditation and registration. A data asset foundation must appoint an AAP to obtain accreditation for its assets.
55. New section 85: Data asset accreditation. This section prohibits a data asset foundation from utilising a data asset unless there is a valid data asset accreditation in place for it. Where an accreditation is revoked or expires, the data asset enters a remediation period of 90 days (or such other period as prescribed) during which the prohibition on utilisation continues but the personal property right remains in effect. The foundation must provide confirmation of a valid accreditation within that period. The registrar may extend the remediation period by up to a further 90 days on written application if satisfied there are reasonable grounds. If a valid accreditation is not provided on expiry of the remediation period, the registrar must follow the prescribed process to remove the data asset from the register.
56. New section 86: Data enforcers. This section creates a new oversight role for data asset foundations, the Data Enforcer. The enforcer's criteria and functions will be defined in the data governance framework. The data asset foundation council has a duty to cooperate with the data enforcer.
57. New section 86a: Liability of data enforcers. This section sets out the liability position of data enforcers. Nothing in the foundation instrument, foundation rules, data governance framework or any contract may relieve a data enforcer of liability for fraud, wilful misconduct or gross negligence. Conversely, a data enforcer is not liable for the actions of a data asset foundation unless those actions were committed with its consent or connivance or are attributable to its neglect.
58. New section 87: Council of a data asset foundation. This section imposes enhanced duties on the data asset foundation's council members, in addition to their existing duties under the 2011 Act. These include specific duties to ensure compliance with the data governance framework and to safeguard the integrity and utility of the data asset foundation's data assets.
59. New section 88: Documents to be kept at business address of data asset foundation. This section allows the Department to prescribe in regulations additional documents that a data asset foundation must keep.
60. New section 89: Data asset foundation to keep accounts. This section requires a data asset foundation's financial statement to specify the basis of valuation used for its data assets and to record associated revenues and costs.
61. New section 90: Applications to the High Court relating to data asset foundations. This section grants the High Court specific powers to make orders relating to data asset foundations, including resolving disputes over the utilisation of data assets and rectifying the data asset register.
62. New section 91: Data asset foundation regulations. This section provides the principal regulation-making power for Part 7. It grants the Department power to make all necessary

regulations to give effect to the data asset foundation framework. Subsections (9) and (10) establish a two-tier Tynwald control mechanism:

- a. regulations involving civil penalties, criminal offences, exemptions, or the modification of primary legislation cannot come into operation until they are approved by Tynwald.
 - b. all other regulations (such as operational or technical standards) may come into operation immediately but will cease to have effect if Tynwald fails to approve them at the sitting at which they are laid or the next subsequent sitting.
63. New section 92: Guidance. This section permits the Department to issue and publish guidance on the operation of this Part.
64. New section 93: Review of data asset foundation provisions. This section mandates the Department to conduct a review of the data asset foundation provisions within 3 years of their commencement.

SUMMARY OF REGULATION MAKING POWERS

65. The Bill confers regulation making powers on the Department for Enterprise, primarily under new section 91. These powers are necessary to build the detailed operational, technical and governance framework for the Data Asset Foundation regime.
66. Key powers enable the Department to make regulations for:
- a. the Data Governance Framework, including standards for stewardship, security and ethics;
 - b. Model Foundation Rules for data asset foundations;
 - c. the form and content of Data Asset Dedication Instruments;
 - d. the Data Asset Register, including its form, content, public accessibility and the fees for registration and services;
 - e. the Accreditation Regime, including the criteria and process for accrediting Accredited Assurance Providers and the process for issuing data asset accreditations;
 - f. Data Enforcers, including conferring functions on enforcers and establishing compliance frameworks;
 - g. specifying alternative, foreign data registers as equivalent;
 - h. establishing an Alternative Dispute Resolution (ADR) process for disputes regarding data assets; and
 - i. imposing civil penalties for non-compliance and procedures for striking foundations off the register.
67. Tynwald Procedure: New section 91 establishes a two-tier mechanism for Tynwald control over these regulations:
- a. strict approval required before operation - regulations dealing with sensitive or punitive matters cannot come into operation unless they are approved by Tynwald. This applies to regulations which:
 - i. impose civil penalties;
 - ii. establish mandatory alternative dispute resolution processes;

- iii. create criminal offences or set penalties;
 - iv. grant exemptions from the Act; or
 - v. modify or amend this Act or any other enactment within the twelve months beginning on the date section 68 comes into operation.
- b. approval required for continuance - all other regulations made under this Part (such as those setting technical standards, fees or procedural forms) may come into operation immediately. However, they must be laid before Tynwald and will cease to have effect if Tynwald fails to approve them at the sitting at which they are laid or the next subsequent sitting.