

Statutory Document No. 2019/0263

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*Proceeds of Crime Act 2008*

## **PROCEEDS OF CRIME ACT (COMPLIANCE WITH INTERNATIONAL STANDARDS) (NO.2) ORDER 2019**

*Draft laid before Tynwald:*

*Draft Approved by Tynwald:*

*Coming into Operation: in accordance with article 2*

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The Council of Ministers, having consulted such persons and bodies as it considers appropriate<sup>1</sup>, makes the following Order under section 222A of the Proceeds of Crime Act 2008.

### **1 Title**

This Order is the Proceeds of Crime Act (Compliance with International Standards) (No.2) Order 2019.

### **2 Commencement**

If approved by Tynwald, this Order comes into operation on the day after it is approved<sup>2</sup>.

### **3 Proceeds of Crime Act 2008 amended**

- (1) The Proceeds of Crime Act 2008 is amended as follows.
- (2) In section 43 (searches) —
  - (a) in subsections (1), (1A) and (2) for “customs officer or constable”, wherever occurring, substitute «customs officer, constable or financial investigator»;
  - (b) in subsection (3), for —
    - (i) “officer or constable”; and
    - (ii) “constable or officer”,

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<sup>1</sup> Consultation is required under section 222A(5)(a) of the Proceeds of Crime Act 2008.

<sup>2</sup> Section 222A(5)(b) of the Proceeds of Crime Act 2008 specifies that no order under section 222A(1) may be made unless “a draft of the proposed order has been laid before a sitting of Tynwald and that draft has been approved at a subsequent sitting of Tynwald”.

- substitute «officer, constable or financial investigator»; and
- (c) in subsection (4), for “officer or constable”, substitute «officer, constable or financial investigator».
- (3) In section 43A(1) (searches: postal packets), for “customs officer or constable”, in both places, substitute «customs officer, constable or financial investigator».
- (4) In section 44 (searches: prior approval) —
- (a) in subsection (3)(a), after “constable”, insert «or a financial investigator»;
- (b) in subsection (4), for “the constable or customs officer who exercised the powers must give a written report to the Chief Constable or, as the case may be, the Collector”, substitute «the constable, financial investigator or customs officer who exercised the powers must give a written report to the Chief Constable or, in the case of a customs officer, to the Collector»; and
- (c) in subsection (5), for “constable or customs officer”, substitute «constable, financial investigator or customs officer».
- (5) In section 45(3) (searches: codes of practice), for “officer or constable”, in both places, substitute «officer, constable or financial investigator».
- (6) In section 46(1) and (2) (seizure of cash), for “officer or constable”, wherever occurring, substitute «officer, constable or financial investigator».
- (7) In section 47 (detention of seized cash) —
- (a) in subsection (1), for “customs officer or constable”, substitute «customs officer, constable or financial investigator»; and
- (b) in subsection (6), for “a customs officer or a constable”, substitute «a customs officer, constable or financial investigator».
- (8) In section 48(2) (detained cash: interest), for “customs officer or constable”, substitute «customs officer, constable or financial investigator».
- (9) In section 49(4) (release of detained cash), for “customs officer or constable”, substitute «customs officer, constable or financial investigator».
- (10) In section 65 (general interpretation of Part 1), after the definition of “excepted joint owner”, insert —
- «**financial investigator**” means a financial investigator of the Economic Crime Unit of the Isle of Man Constabulary».
- (11) In section 96(2)(b) (restraint orders: conditions for exercise of powers), for “is reasonable cause to believe”, substitute «are reasonable grounds to suspect».

- (12) After section 97(7) (making of restraint orders), insert —
- «(7A) Subsections (7B) and (7C) apply where the Court of General Gaol Delivery makes a restraint order (by virtue of the first condition in section 96) as a result of a criminal investigation having been started in the Island with regard to an offence.
  - (7B) The court —
    - (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”); and
    - (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 98(2)).
  - (7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court —
    - (a) must give reasons for its decision; and
    - (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 98(2)).
  - (7D) In considering whether to make an order under subsection (7), the court must, in particular, consider whether any restriction or prohibition on the defendant's travel outside the Island ought to be imposed for the purpose mentioned in that subsection.».
- (13) In section 194(1) (code of practice), for paragraphs (b) and (c), substitute —
- «(b) constables;
  - (c) customs officers; and
  - (d) appropriate officers.».
- (14) In section 195 (“Appropriate officers”), at the end of subsection (2)(b), insert —
- «;
  - (c) a person authorised in writing for the purpose by the Attorney General or the Chief Constable.».

**MADE**

**W GREENHOW**  
*Chief Secretary*

*EXPLANATORY NOTE*

*(This note is not part of the Order)*

This Order amends the Proceeds of Crime Act 2008 (“the Act”) in accordance with and in order to implement recommendations made in the Fifth Round Mutual Evaluation Report of the Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (“MONEYVAL”).

This Order is made under section 222A of the Act, subsection (1) of which provides that the Council of Ministers may amend the Act in connection with the implementation of relevant international obligations or standards or the recommendations of international bodies that are involved with the adoption, monitoring or promotion of such obligations or standards, including recommendations made by MONEYVAL. Those obligations or standards include FATF Recommendations, against which MONEYVAL assessed the Island in order to produce its Mutual Evaluation Report.

The MONEYVAL recommendations in response to which the amendments are made include the need to –

- develop a strategy to pursue the effective restraint and confiscation of both instrumentalities and proceeds of crime (and their corresponding value) as a high-level criminal justice policy objective, especially with regard to large amounts of proceeds of crimes committed abroad;
- systematically apply a civil recovery framework, also in cases where, for any reason, no conviction of predicate offences or money laundering can be obtained;
- adopt a more proactive policy for using all available channels through international cooperation in order to initiate restraint or confiscate assets located or moved abroad; and
- take steps to proactively identify foreign proceeds located in the Island that may be subject to restraint or confiscation.

Chapter 3 of Part 1 is amended so as to enable a financial investigator of the Economic Crime Unit of the Isle of Man Constabulary to exercise powers and functions in relation to the recovery of cash in summary proceedings. A definition of “financial investigator” is inserted into section 65 (general interpretation of Part 1 of the Act).

Section 96(2)(b) is amended so as to change the standard required in relation to the first condition to be satisfied, before exercising powers in relation to restraint orders, from there being “reasonable cause to believe” to there being “reasonable grounds to suspect” (that the alleged offender has benefitted from the alleged offender’s criminal conduct).

Section 97 is amended to include subsections (7A) to (7D) to supplement subsection (7), under which provision the court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

Section 195 is amended so as to add a person authorised in writing for the purpose by the Attorney General or the Chief Constable, to the categories of person who are an “appropriate officer” in relation to a confiscation investigation, a detained cash investigation and a money laundering investigation. Section 194 (code of practice – exercise of functions under Chapter 2 of Part 4 of the Act) is amended accordingly to apply to appropriate officers.