



Isle of Man

Ellan Vannin

CASH IN POSTAL PACKETS BILL 2012

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Explanatory Memorandum

1. The principal purpose of this Bill, which is promoted by the Treasury, is to amend the Customs and Excise Management Act 1986, the Post Office Act 1993 and the Proceeds of Crime Act 2008 to make provision in relation to cash contained in postal packets.
2. Clauses 1 and 2 make provision about the resulting Act's short title and commencement.
3. Clause 3 provides for the resulting Act to expire (as it is amending legislation) on the day after its promulgation or, if all its provisions are not in operation on its promulgation, on the day after the last provision is brought into operation. The expiry does not affect the continuing operation of the amendments.
4. Clauses 4 to 9 amend the Customs and Excise Management Act 1986. Section 76A(1) is amended to insert definitions of "postal packet" and "sender". In addition, the definitions of "declaration" and "export" and "import" are amended. Section 76B(1) is substituted so as to place an obligation on persons exporting or importing goods to disclose to an officer of customs and excise if the goods consist of or include cash in excess of the prescribed amount and to answer any questions in respect of that cash. New sections 76CA to 76CC are inserted to deal with persons sending and receiving cash in excess of the prescribed amount in postal packets. If such a packet is sent from the Island, the sender must make a declaration. In the case of a packet sent to the Island, the addressee must make a declaration. If an officer of customs and excise reasonably believes that a packet contains cash in excess of the prescribed amount, it may be detained, opened and examined. There is also an order making power in respect of the form and manner in which declarations are to be made and a more general order making power to give further effect to section 76CA or 76CB. A new subsection (2A) is inserted in section 76H. It provides that when cash is seized under section 76G, in the case of cash contained in postal packets, written notice must be given to the sender (if known) and the addressee. A new section 76I provides that a person is not excused from complying with a requirement under Part VA of the Customs and Excise Management Act 1986 on the grounds of self-incrimination or legal professional privilege/any other legal privilege. However, a statement or admission in so complying is not admissible in evidence (although for the avoidance of doubt this is stated not to limit section 76G or the exercise of a power under any other statutory provision).
5. Clauses 10 to 12 amend the Post Office Act 1993. Section 15 is amended so as to provide that, for the purposes of that section, "statutory provisions" includes

certain Community instruments. Consequently, in section 15(2)(e) the word “enactment” is substituted with “provision”. Section 49(3) is amended so as to insert cross-references to Part VA of the Customs and Excise Act 1986 and Chapter 3 of Part 1 of the Proceeds of Crime Act 2008 in relation to cash contained in postal packets. Some minor clerical amendments are also made to section 49(3).

6. Clauses 13 to 19 amend the Proceeds of Crime Act 2008. The definition of cash in section 43 is expanded and clarified and a new section 43A is inserted in relation to the detention, opening and examination of postal packets suspected of containing cash in respect of which certain conditions are satisfied. Sections 44, 45, 49 and 54 are amended as a result of the new section 43A.
7. The Treasury does not anticipate that implementation of the provisions contained in the Bill will require any significant additional resources, but that any necessary control or enforcement action required would be resourced from the existing budgets, and using the existing staffing, of the bodies involved.
8. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



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CASH IN POSTAL PACKETS BILL 2012

1 **A BILL** to amend the Customs and Excise Management Act 1986; the Post
 2 Office Act 1993 and the Proceeds of Crime Act 2008 to make provision in
 3 relation to cash contained in postal packets; to add definitions in section 15 of
 4 the Post Office Act 1993; 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:—

5 *Introductory*

6 **1 Short title**

7 The short title of this Act is the Cash in Postal Packets Act 2012.

8 **2 Commencement**

- 9 (1) This Act, other than section 1 and this section, comes into operation on
 10 the day appointed by order of the Treasury.
- 11 (2) The Treasury may by order make transitional and saving provisions
 12 which it considers necessary or expedient in connection with the
 13 commencement of any provision made by or under this Act.

14 **3 Expiry**

- 15 (1) This Act expires —
- 16 (a) on the day after its promulgation if all its provisions are in
 17 operation on its promulgation; or
- 18 (b) otherwise, on the day after the last provision is brought into
 19 operation.
- 20 (2) But the expiry does not affect the continuing operation of the
 21 amendments.

1 *Amendment of the Customs and Excise Management Act 1986*

2 **4 Amendment of the Customs and Excise Management Act 1986**

3 The *Customs and Excise Management Act 1986*¹ is amended in accordance with
4 sections 5 to 9.

5 **5 Section 76A amended**

6 (1) Section 76A(1) (interpretation of Part VA) is amended as follows.

7 (2) In the definition of “declaration” after “section 76C(1)” insert “, 76CA(2)
8 or (3) or 76CB(5) or (6)”.

9 (3) In the definition of “ “export” and “import” ” after “Island” insert “and
10 includes the transportation of cash from or to the Island in postal
11 packets”.

12 (4) After the definition of “money laundering” insert —

13 | “ **“postal packet”** has the same meaning as in section 58(1) of the *Post*
14 | *Office Act 1993*²”.

15 (5) After the definition of “property obtained through unlawful conduct”
16 insert —

17 | “ **“sender”**, in relation to any postal packet, means the person whose
18 | communication it is;”.

19 **6 Section 76B amended**

20 (1) For section 76B(1) (disclosure of cash) substitute —

21 | “(1) A person who is exporting or importing goods must —

22 | (a) disclose to an officer if the goods consist of or include cash
23 | with a value in excess of the prescribed amount; and

24 | (b) answer questions posed to him or her by an officer in
25 | respect of any such cash.”.

26 (2) For the marginal note to section 76B substitute “Persons exporting or
27 importing goods”.

28 **7 New sections 76CA to 76CC**

29 After section 76C insert —

¹ c. 34

² c. 20



“76CA Persons sending and receiving cash in postal packets

- (1) This section applies where a postal packet contains cash with a value in excess of the prescribed amount.
- (2) Where a postal packet is sent from the Island, the sender must make a declaration to an officer.
- (3) Where a postal packet is sent to the Island, the person to whom the packet is addressed must make a declaration to an officer upon receiving the packet.
- (4) The Treasury must by order prescribe the form and manner in which declarations under subsections (2) and (3) are to be made.

76CB Cash in postal packets

- (1) Subsection (2) applies where an officer reasonably suspects that a postal packet contains cash with a value in excess of the prescribed amount.
- (2) The officer may —
 - (a) request that the Isle of Man Post Office detain and open that postal packet; and
 - (b) examine its contents.
- (3) Subsections (4) to (6) apply if —
 - (a) a postal packet examined under subsection (2) contains cash with a value in excess of the prescribed amount; and
 - (b) a declaration has not already been made in respect of that cash in accordance with section 76CA(2) or (3).
- (4) The Isle of Man Post Office may continue to detain the cash but the postal packet and the rest of its contents must be forwarded to the addressee.
- (5) In the case of a packet which is sent to the Island, the person to whom the packet is addressed must make a declaration to an officer.
- (6) In the case of a packet which is sent from the Island, the sender must make a declaration to an officer.
- (7) The Treasury must by order prescribe the form and manner in which declarations under subsections (5) and (6) are to be made.
- (8) Without limiting section 76G, a postal packet that is opened and examined under this section must be resealed with all of its original contents and forwarded by the Isle of Man Post Office to the addressee if —
 - (a) it does not contain cash with a value in excess of the prescribed amount; or

(b) a declaration has been received by an officer in respect of that packet in accordance with subsection (5) or (6).

(9) This section does not affect the operation of any other statutory provision.

76CC Sections 76CA and 76CB supplementary

An order under section 76CA(4) or 76CB(7) may make detailed provision in respect of any matter that the Treasury considers is necessary or expedient to give further effect to those sections.”.

8 Section 76H amended

(1) Section 76H (notice of seizure of cash) is amended as follows.

(2) At the beginning of subsection (2) insert “Subject to subsection (2A),”.

(3) After subsection (2) insert —

“(2A) In the case of cash contained in a postal packet, notice must be given to —

(a) the sender (if known); and

(b) the addressee.”.

9 New section 76I

After section 76H add —

“76I No excuse from complying with a requirement under Part VA

(1) A person is not excused from complying with a requirement under this Part on the ground that —

(a) to do so might incriminate the person or the person’s spouse or civil partner of an offence; or

(b) the answer to the question concerned may be the subject of legal professional privilege or any other legal privilege.

(2) However, a statement or admission made in so complying is not admissible in evidence against either of them in proceedings for any offence other than perjury.

(3) For the avoidance of doubt, subsection (2) does not limit section 76G or the exercise of a power under any other statutory provision.”.

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Amendment of the Post Office Act 1993

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10 Amendment of the Post Office Act 1993

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The *Post Office Act 1993*³ is amended in accordance with sections 11 and 12.

4

11 Section 15 amended

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(1) Section 15 (application of customs Acts) is amended as follows.

6

(2) In subsection (2)(e) for “enactments” substitute “provisions”.

7

(3) At the end add —

8

“(7) In this section, “statutory provisions” includes —

9

(a) any Community instrument which applies as part of the law of the Island under section 2(1) of the *European Communities (Isle of Man) Act 1973*⁴; and

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(b) any Community instrument applied to the Island as part of the law of the Island under section 2A of that Act.

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(8) In subsection (7) “Community instrument” has the same meaning as in section 1(1) of the *European Communities (Isle of Man) Act 1973*.”.

17

12 Section 49 amended

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(1) Section 49(3) (inviolability of mails) is amended as follows.

19

(2) Omit “or” at the end of paragraph (a).

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(3) After paragraph (a) insert —

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“(aa) to the powers conferred by Part VA of the *Customs and Excise Management Act 1986*⁵ (importation and exportation of cash) in relation to cash contained in postal packets;

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(ab) to the powers conferred by Chapter 3 of Part 1 of the *Proceeds of Crime Act 2008*⁶ (recovery of cash in summary proceedings) in relation to cash contained in postal packets;”.

28

(4) At the end of paragraph (b) insert “or”.

29

(5) At the beginning of paragraph (c) insert “to”.

³ c.20

⁴ c.14

⁵ c.34

⁶ c.13

Amendment of the Proceeds of Crime Act 2008

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13 Amendment of the Proceeds of Crime Act 2008

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The *Proceeds of Crime Act 2008*⁷ is amended in accordance with sections 14 to 19.

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14 Section 43 amended

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(1) Section 43 (searches) is amended as follows.

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(2) At the end of subsection (6)(e) insert —

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“or;

8

(f) a forged or counterfeit version of any instrument or notes and coins in any currency mentioned in —

9

10

(i) paragraphs (a) to (e) of this definition; or

11

(ii) subsection (7).”

12

(3) After subsection (7) insert —

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“(7A) Where cash consists of a forged or counterfeit version of any instrument or notes and coins in any currency, it shall be taken, for the purposes of this Chapter, to have the value it would have had were it genuine.”

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15 New section 43A

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After section 43 insert —

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“43A Searches: postal packets

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(1) If a customs officer or constable has reasonable grounds for suspecting that a postal packet contains cash in respect of which the conditions in section 43(1)(a) and (b) are satisfied, the customs officer or constable may—

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(a) request that the Isle of Man Post Office detain and open that postal packet; and

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26

(b) examine its contents.

27

(2) Where a postal packet is opened and examined under subsection (1) but does not contain cash in respect of which the conditions in section 43(1)(a) and (b) are satisfied, the Isle of Man Post Office must reseal the packet with all of its original contents and forward it to the addressee.

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(3) Where a postal packet is opened and examined under subsection (1) and is found to contain cash in respect of which the conditions in section 43(1)(a) and (b) are satisfied, the Isle of Man Post Office

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⁷ c.13



- 1 | may continue to detain the cash but the postal packet and the rest
2 | of its contents must be forwarded to the addressee.
- 3 | (4) In this section “postal packet” has the same meaning as in section
4 | 58(1) of the *Post Office Act 1993*⁸.
- 5 | (5) This section does not affect the operation of any other statutory
6 | provision.”.

7 | **16 Section 44 amended**

- 8 | In section 44(1) (searches: prior approval), after “section 43” insert “or section
9 | 43A”.

10 | **17 Section 45 amended**

- 11 | (1) Section 45 (searches: code of practice) is amended as follows.
- 12 | (2) After subsection (1) insert —
- 13 | “(1A) The Department of Home Affairs, after consulting the Isle of Man
14 | Post Office, must make a code of practice in connection with the
15 | exercise of the powers conferred by section 43A and bring it into
16 | operation by order.”.
- 17 | (3) In subsection (3) for “the code” substitute “a code”.
- 18 | (4) In subsection (4) for “The code” substitute “A code”.
- 19 | (5) In the marginal note to section 45, for “code of practice” substitute
20 | “codes of practice”.

21 | **18 Section 49 amended**

- 22 | (1) Section 49 (release of detained cash) is amended as follows.
- 23 | (2) In subsection (3) after “cash was seized” insert “or, in the case of cash
24 | contained in a postal packet, upon an application by the sender or the
25 | person to whom the packet is addressed”.
- 26 | (3) After subsection (4) add —
- 27 | “(5) In subsection (3) “sender”, in relation to any postal packet, means
28 | the person whose communication it is.”.

29 | **19 Section 54 amended**

- 30 | (1) Section 54 (compensation where no forfeiture order made) is amended as
31 | follows.
- 32 | (2) For subsection (1) substitute —

⁸ c.20

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“(1) If no forfeiture order is made in respect of any cash detained under this Chapter —

- (a) the person to whom the cash belongs;
- (b) the person from whom the cash was seized; or
- (c) in the case of cash contained in a postal packet, the sender or the person to whom the packet is addressed,

may make an application to the High Bailiff for compensation.”.

(3) After subsection (7) add —

“(8) In subsection (1) “sender”, in relation to any postal packet, means the person whose communication it is.”.



IN THE KEYS

CASH IN POSTAL PACKETS BILL 2012

A **BILL** to amend the Customs and Excise Management Act 1986; the Post Office Act 1993 and the Proceeds of Crime Act 2008 to make provision in relation to cash contained in postal packets; to add definitions in section 15 of the Post Office Act 1993; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR TEARE

JUNE 2012