



## **TERRORISM AND CRIME (MISCELLANEOUS AMENDMENTS) BILL 2015**

### **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Juan Watterson BA (Hons), ACA, MHK*

#### **INTRODUCTION**

1. These explanatory notes relate to the Terrorism and Crime (Miscellaneous Amendments) Bill 2015. They have been prepared by the Cabinet Office 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, and are not meant to be, a comprehensive description of the Bill.

#### **SUMMARY**

3. The Terrorism and Crime (Miscellaneous Amendments) Bill 2015 makes a number of amendments to the following Acts –

Criminal Justice Act 1963 ("the 1963 Act")

Criminal Justice Act 2001 ("the 2001 Act")

Anti-Terrorism and Crime Act 2003 ("the 2003 Act")

Proceeds of Crime Act 2008 ("the 2008 Act"); and

Terrorism and Other Crime (Financial Restrictions) Act 2014 ("the 2014 Act")

The purpose of the amendments is to;

- a) Provide for the possibility of taking into account, as evidence of bad character, proof of previous convictions for offences, which currently only encompasses England and Wales. The amendment would provide that offences committed in the British Islands, the EU, countries and territories to which the Warsaw Convention extends and the Overseas Territories<sup>1</sup> may also be taken into account by the Island's Courts.

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<sup>1</sup> section 50(1) of the British Nationalities Act 1981 identifies "British overseas territory" as meaning a territory mentioned in Schedule 6;" and Schedule 6 includes: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands Gibraltar, Hong Kong, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, The Sovereign Base Areas of Akrotiri and Dhekelia (that is to say the areas mentioned in section 2(1) of the Cyprus Act 1960), Turks and Caicos Islands, Virgin Islands.

- b) Adopt the language from the FATF<sup>2</sup> and other relevant international standards in respect of property, to make explicit that this also covers legal documents or instruments evidencing title to or an interest in such assets.
  - c) Confer on the Council of Ministers, subject to the approval of Tynwald, and following consultation with the persons or bodies the Council considers appropriate, the authority to make changes to legislation by order to require compliance with international standards and operational practices in anti-money laundering and countering the financing of terrorism.
  - d) Change the Tynwald procedure so that, before such an order can be made it must be subject to a two-stage approval process; being first laid in draft at one Tynwald sitting, before it can be approved at a subsequent sitting.
  - e) Address an anomaly within existing legislation whereby currently the maximum summary penalty available for custody under the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015<sup>3</sup> ("the AML Code") exceeds the summary penalty for the main money laundering offences under the Proceeds of Crime Act 2008. The amendment will increase the maximum summary penalty in the 2008 Act from 6 to 12 months.
  - f) Enable the Isle of Man to implement UN sanctions measures in a timelier manner thus reducing the risk of asset flight.
  - g) Extend in terrorist financing legislation the definition of funds subject to freezing orders to cover assets held, owned or controlled "jointly" or "indirectly" by the relevant persons.
4. The reasons for the amendments are, respectively, to —
- a) Remedy a gap in legislation that will bring the Isle of Man in line with the UK's Criminal Justice Act 2003 providing for the treatment of previous convictions for offences outside of England and Wales and an equivalent to section 73 of the UK's Police and Criminal Evidence Act 1984 dealing with proof of convictions in EU Member States. The amendment is also in line with Article 11 of the Warsaw Convention which deals with previous convictions in the context of money laundering convictions.
  - b) Make explicit that legal documents or instruments evidencing title to or an interest in such assets were also 'property' by adopting the language of the relevant international conventions and the FATF definitions to avoid any legal uncertainty. In recent evaluations of other jurisdictions by MONEYVAL<sup>4</sup> the assessors have commented that the definition of "property" in proceeds of crime and related legislation needed to be comprehensively transposed from international standards. The UK's Proceeds of Crime Act 2002 also contains extended definitions of "property".
  - c) Ensure that the Isle of Man can adhere in a timely manner to international standards in the matter of anti-money laundering and anti-terrorism law enforcement. There is an increasing need to adhere to international standards in the matter of anti-money laundering and anti-terrorist law enforcement in a timely manner. This is something that the Isle of Man has found challenging to achieve as such changes currently require primary legislation. Conferring on the Council of

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<sup>2</sup> Financial Action Task Force; the FATF Recommendations are the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, adopted by FATF, together with any guidance or supporting documentation published by FATF.

<sup>3</sup> <http://www.tynwald.org.im/links/tls/SD/2015/2015-SD-0102.pdf>

<sup>4</sup> MONEYVAL is the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism.

Ministers the authority to amend legislation by order to require compliance with such standards would achieve this aim. The power is limited to standards set by international bodies which are specified in the legislation.

- d) Provide for a procedure for such orders made by the Council of Ministers so that two Tynwald sittings are required for the order to be approved and then made. The order must also first be subject to consultation with the persons or bodies the Council considers appropriate. The procedure is intended to ensure that Tynwald Members and interested parties have appropriate time in which to consider the measure proposed in the order and seek further clarification as required, whilst providing for a more timely response to international standards on anti-money laundering and terrorist financing and proliferation than primary legislation permits.
- e) Address an anomaly within existing legislation so that the maximum summary penalty for money laundering offences under the 2008 Act is the same as the maximum summary penalty for money laundering offences under the AML Code. International bodies stress the need for countries to have sufficiently robust penalties for money laundering and it is considered to be appropriate for the maximum custody penalty on summary conviction for a substantive money laundering offence to be 12 months.
- f) Meet the Isle of Man Government's policy to implement international sanctions measures, including financial restrictions and terrorist asset-freezing requirements in respect of designated persons and entities, adopted by the UN, the EU and the UK, in a timely manner. There are a number of UN Sanctions Committees which have been established under UN Security Council Resolutions which maintain lists of persons and entities which should be subject to terrorist asset freezing requirements and other financial restriction measures. Currently, the Isle of Man implements UN sanctions measures by applying and implementing the EU legislation which implements the UN measures for the Member States using the powers in the European Communities (Isle of Man) Act 1973.

Although when the EU legislation is applied to the Island it is done so in such a way that changes to lists of designated persons under the EU legislation automatically have effect in the Isle of Man, there is a delay between the UN Committees updating their lists and the EU reflecting the changes in its legislation. As asset flight from a country can take place within hours of a person or entity being listed by a UN Committee, the delay between the UN listing and implementation in national law should be as short as possible and delays elsewhere have been commented upon by MONEYVAL. By amending the definition of "designated person" so that it makes direct reference to persons or entities listed in the various anti-terrorist lists prepared by the Committees set up by the United Nations Security Council the delay between UN listing and implementation in the law of the Island will be eliminated.

- g) Reflect advice arising out of recent MONEYVAL evaluations of other jurisdictions that relevant terrorist financing legislation should expressly extend the definition of funds subject to freezing to cover assets "jointly" or "indirectly" owned, held or controlled by the relevant persons.

## COMMENTARY ON CLAUSES

5. **Clause 1** gives the Bill its short title.
6. **Clause 2** deals with the commencement of the Act, which comes into operation on such day or days as the Department of Home Affairs may by order appoint.
7. **Clause 3** deals with the interpretation of certain terms.
8. **Clause 4** amends section 24 of the 1963 Act which deals with proof of previous conviction, by expanding the references in it to courts of the British Islands to include courts of the Member States of the EU and of jurisdictions to which the Warsaw Convention (which is defined) extends British overseas territories (which is defined) and such other territories as the Department of Home Affairs may add by order, subject to Tynwald approval ("the Extension").
9. **Clause 5** amends section 53 of the 2001 Act so as to apply the Extension in relation to evidence in criminal proceedings
10. **Clause 6** amends section 75 of the 2003 Act by substituting the existing definition of "property" with a more comprehensive definition in subsection (1) ("the Property Definition").
11. **Clause 7** amends the 2003 Act by inserting a new section 76B (compliance with international standards) so as to enable the Council of Ministers to amend the 2003 Act to implement international obligations and recommendations of certain international bodies by order. Such an order must be laid before Tynwald and approved at a subsequent sitting of Tynwald (the "International Standards Amendment").
12. **Clause 8** amends section 77 of the 2003 Act by inserting a new subsection 2A to exclude orders made under section 76B(1) or (4) from the effect of subsection (2).
13. **Clauses 9 and 10** amend section 65(4) and section 132(1) of the 2008 Act by substituting the existing definitions of "property" with the Property Definition.
14. **Clause 11** amends section 150 of the 2008 Act by substituting the references to "6 months" in subsections (1)(a) and (2)(a) for "12 months".
15. **Clauses 12, 13 and 14** amend section 158(9), section 197(1) and section 218(4) by substituting the existing definitions of "property" with the Property Definition
16. **Clause 15** amends the 2008 Act by inserting the International Standards Amendment as a new section 222A (compliance with international standards). Such an order must be laid before Tynwald and approved at a subsequent sitting of Tynwald.
17. **Clause 16** amends section 223 of the 2008 Act by adding reference to "section 222A(1) or" after "under" in subsection (4) to reflect the more onerous Tynwald requirements set out in the new section 222A.

- 18 **Clause 17** amends section 3 of the *Terrorism and Other Crime (Financial Restrictions) Act 2014* ("the 2014 Act") by amending the definition of "designated person" in subsection (1) and by inserting a new paragraph (c) in which reference is made to natural or legal persons, groups or entities mentioned in lists maintained by committees established by the United Nations Security Council. New subsections (2) and (3) are inserted so as to enable the Council of Ministers to amend the definition of "designated person" to reflect changes to EU or United Nations instruments. Such an order will be subject to Tynwald approval
- 19 **Clause 18** amends the 2014 Act by inserting a new section 5A (Meaning of "owned", "held" and "controlled") so as to give the words the same meaning as they have in Council Regulation (EC) No 2580/2001 of 27 December 2001.
- 20 **Clause 19** makes amendments to the 2014 Act by inserting the International Standards Amendment" as new section 69A (compliance with international standards). Such an order must be laid before Tynwald and approved at a subsequent sitting of Tynwald.
- 21 **Clause 20** makes provision for the expiry of the Bill once all of its provisions are in operation.

## **HUMAN RIGHTS**

22. It is considered that the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

## **FINANCIAL EFFECTS OF THE BILL AND EFFECT ON HUMAN RESOURCES**

23. The Bill is not expected to increase the expenditure of Government, reduce the income of Government, or require any additional public service human resources.

## **COMMENCEMENT**

24. The Terrorism and Crime (Miscellaneous Amendments) Act 2015 will come into operation on the day that Royal Assent is announced in Tynwald.

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