



## **TERRORISM AND OTHER CRIME (FINANCIAL RESTRICTIONS) BILL 2014**

### **EXPLANATORY NOTES**

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

#### **INTRODUCTION**

- 1.** These explanatory notes relate to the Terrorism and Other Crime (Financial Restrictions) Bill 2014. They have been prepared by the Department of Home Affairs 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 AND BACKGROUND**

- 3.** One of the major concerns of the international community is the threat posed to global security by terrorism. Therefore the international community, through its various bodies such as the United Nations, the Financial Action Task Force (FATF), the International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD), maintains a watching brief on the work the various countries and territories of the world undertake to combat terrorism.
- 4.** Since the Anti-Terrorism and Crime Act 2003 (the 2003 Act) was passed by Tynwald, the Island has updated its legislation in line with similar legislation in the United Kingdom through the Terrorism (Finance) Act 2009 (the 2009 Act) and the Anti-Terrorism and Crime (Amendment) Act 2011. However, the United Kingdom subsequently passed a further Act, namely the Terrorism Asset-Freezing etc. Act 2010. This was incorporated into Manx law by means of an Order-in-Council with an undertaking given to Tynwald that the matter would be translated into a Manx Act after the General Election in 2011.
- 5.** The Island has recently been accepted as a participant in the assessment procedures of MONEYVAL; a regional organisation, under the auspices of the Council of Europe, which has as its aim ensuring the countries under its auspices have in place effective systems to counter money laundering and terrorist financing and comply with the relevant international standards in these fields. In this connection the Island was subject to an inspection by that body. The subsequent Report was published in September 2013. It made some recommendations concerning improvements to the Island's anti-terrorism legislation and certain provisions relating to the prevention of money laundering.
- 6.** The Bill unites the legislation that empowers the placing of financial restrictions on the activities of individual persons or bodies, for the purposes of countering the financing of terrorism (and other serious crime), within one Act rather than the current three sources of legislation and it addresses issues raised in the inspection report by

MONEYVAL. There are some consequential changes to other legislation including the repeal of the 2009 Act, which concerned the type of financial restriction known as a direction, and parts of the 2003 Act relating to the type of financial restriction known as a freezing order.

7. The Bill is split into 5 Parts comprising 73 clauses and 4 Schedules.

#### **EUROPEAN CONVENTION ON HUMAN RIGHTS (Convention)**

8. Section 16 of the Human Rights Act 2001 requires the member moving the Bill to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). In the opinion of the Member moving the Bill, the provisions of the Terrorism and Other Crime (Financial Restrictions) Bill 2014 are compatible with the Convention rights.

#### **FINANCIAL EFFECTS OF THE BILL**

9. In the view of the mover of the Bill, it is not expected to have any financial or resource implications.
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### **NOTES ON CLAUSES**

#### **PART 1 – OPENING PROVISIONS**

10. **Clause 1** gives the title of the Act and **Clause 2** says the Act will come into operation by Appointed Day Order. Sections or parts of the Act may be brought into operation at the same time, or on different days.

#### **Interpretation**

11. **Clauses 3, 4 and 5** provide interpretation. Clause 3 provides general interpretation for the terms used in the Act. Clause 4 specifically defines financial services and clause 5 defines a resident as a person who is ordinarily resident in the Island. The term "ordinarily resident" is not further defined and so takes its dictionary meaning. Bodies incorporated or constituted or limited liability companies, partnerships or other unincorporated associations formed under the law of the Island are also resident.

#### **PART 2 – FINANCIAL RESTRICTION ORDERS**

12. **Clauses 6 to 12** contain provisions drawn from the 2009 Act (which is to be repealed in its entirety) dealing with the power to make or issue a direction to a person or business.
13. **Clause 6** empowers the Treasury to give a direction to a relevant person (see clause 9(1)) subject to one or more of the following conditions being met. The first condition is that the Financial Action Task Force has advised that action should be taken. The second condition is that the Treasury reasonably believes there is a risk that financing of terrorism or money laundering activities are being carried on. The third condition is that the Treasury reasonably believes proliferation in the country, or anything that facilitates proliferation, poses a significant risk to the national interests of the Island. All these conditions relate to activity or proliferation in the country, by the government of the country or by persons resident in the country in question. Proliferation is defined in clause 3 as the development or production of nuclear, radiological, biological or chemical weapons or systems for their delivery.

- 14. Clause 7** sets out the power to give an interim direction to a relevant person if the Treasury has reasonable suspicion, either that there is a risk that financing of terrorism or money laundering activities are being carried on, or that proliferation or the facilitating of proliferation poses a significant risk to the national interests of the Island. The key difference is the lowering of the evidential level from reasonable belief to reasonable suspicion. Subsection (4) restricts the giving of an interim direction to once if the evidence is the same, or substantially the same.

#### **Requirements to be contained in directions**

- 15. Clause 8** introduces Schedule 1, which sets out the requirements that may be contained in a direction and the persons to whom they may be given.

#### **Schedule 1**

The Schedule broadly replicates the requirements that were in the Schedule to the 2009 Act. Paragraph 1 of the Schedule defines “business relationship” and “enhanced customer due diligence measure”. Paragraphs 2 to 7 detail the specific requirements that may be imposed. Paragraph 2 specifies the requirements that may be imposed by direction. The requirements of a direction must be proportionate and, where the person is a business, may be imposed on a subsidiary of the business. Specific requirements include customer due diligence (paragraph 3), ongoing monitoring of a business relationship (paragraph 4), systematic reporting by providing such documents or information as may be required in the direction (paragraph 5), prohibiting entry into, or the continuance of, a business relationship (paragraph 6) and in relation to the previous matter the Treasury may issue a licence with or without conditions exempting a particular person, or description of persons, from a requirement prohibiting or limiting business (paragraph (7)).

#### **Persons to whom a direction may be given**

- 16. Clause 9** provides that the Treasury may give a direction to a particular person, any description of persons, or all persons acting in the course of a business in the regulated sector (which business is set out in Schedule 4 to the Proceeds of Crime Act 2008). Subsection (2) enables a direction to contain different requirements in relation to different persons. Subsection (3) enables the Treasury to amend the section by order and if Tynwald, at the sitting at which it is laid or the next following sitting, fails to approve it the order will cease to have effect (positive Tynwald procedure) (subsection (4)).

#### **General directions to be given by order**

- 17. Clause 10** states that directions must be contained in an order made by the Treasury. Subsection (2) provides that if the order limits or requires business to cease under paragraph 6 of Schedule 1, the order is subject to the positive Tynwald procedure. In other cases an order must be laid before Tynwald.

#### **Specific directions: notification and duration**

- 18. Clause 11** requires the Treasury to give notice of a direction to the person concerned. Subsection (3) states that an interim direction is valid for 30 days and a final direction is valid for a year. The period is effective in each case from the day on which the direction is given. Subsection (4) empowers the Treasury to vary or revoke the direction at any time and subsection (5) requires the Treasury to notify the person of the variation or revocation.

## **General directions: publication and duration**

- 19. Clause 12** requires the Treasury to publicise the making of the order containing directions. The Treasury must also publicise the fact an order has expired. Subsection (1) applies the section to directions under clause 10 and subsection (3) provides that a revocation order, or one varying the order to make it less onerous, must be laid before Tynwald as soon as practicable after it has been made. Subsection (4) states that an order, if not previously revoked, expires one year after the day on which it was made but this does not limit the power of the Treasury to make a further order.

## **ASSET-FREEZING**

### **Freezing orders: general**

- 20. Clause 13** is extracted from existing section 50 of the 2003 Act. The differences are that in this Bill the definition of "funds" is set out in clause 3. Consequently subsection (7) in section 50 of that Act is subsection (6) in clause 13 of this Bill. Also there are further requirements that may be set out in a freezing order set out in Schedule 2 to this Bill.

### **Schedule 2**

Schedule 2 sets out five further provisions relating to the making of freezing orders. Paragraph 1 states that the order may specify that funds include gold, cash, deposits, securities etc. Paragraph 2 requires the freezing order to include further detail about the meaning of funds being made available to or for the benefit of a person. Paragraph 3 empowers the Treasury to grant licences authorising a person or persons to make funds available to such a person or persons and under such terms as the licence specifies notwithstanding the freezing order. Paragraph 4 provides for a person to be compensated as a result of loss suffered in consequence of the freezing order; or the fact a licence has not been granted; or has been granted on particular terms rather than others; or has been varied or revoked. Lastly, paragraph 5 requires the Treasury to give reasons.

### **Power to make final freezing orders**

- 21. Clause 14** is extracted from section 51 of the 2003 Act. The only difference is that instead of referring to "country or territory" it refers only to "country". This is because in clause 3 of the Bill, "country" includes "territory".

### **Power to make interim freezing orders**

- 22. Clause 15** is extracted from section 51A of the 2003 Act. A similar difference exists in this clause as for clause 14.

### **Duration of freezing orders**

- 23. Clause 16** provides that an interim freezing order may be given for 30 days and a final freezing order may be given for one year from the date on which either was made. This is the same as in sections 51A and 50 of the 2003 Act and the clauses of this Bill relating to directions. Subsection (3) requires the Treasury to keep a freezing order under review.

### **Procedure for making freezing orders**

- 24. Clause 17** empowers the Treasury to make a freezing order and specifies that it must be laid before Tynwald and if at that sitting or the next following sitting Tynwald resolves that the order must cease to have effect it will cease to have effect (negative Tynwald procedure).

### **FREEZING OF TERRORIST ASSETS**

#### **Power to make final designations**

- 25. Clause 18** sets out the conditions under which the Treasury may make a final designation. Subsection (1) specifies that the Treasury may make a designation if they reasonably believe a person is or has been involved in terrorist activity, is owned or controlled whether directly or indirectly by the first person, or that the person is acting on behalf of or at the direction of the first person. Additionally the Treasury must consider it necessary for the purposes of public protection from terrorism to place financial restrictions on the person. Involvement in terrorist activity is defined in subsection (2).

#### **Power to make interim designations**

- 26. Clause 19** The power to make interim designations is similar to the power in clause 18 except that the Treasury need only have reasonable suspicion concerning a person's involvement in terrorist activity in order to make the interim designation.

#### **Notification of final designations**

- 27. Clause 20** requires the Treasury to notify the designated person and publicise the designation. If the Treasury believes the designated person is under the age of 18 or that the designation should not be disclosed by reason of national security, the prevention or detection of serious crime, or in the interests of justice, then it need not publicise the designation generally but only to such persons as it considers appropriate.

#### **Duration and renewal of final designations**

- 28. Clause 21** provides that a final designation expires one year after the day on which it was made, unless it is renewed (subsection (1)). The requirements for renewal of a final designation are that the conditions in clause 18(1) continue to be met. Subsection (5) indicates that where a final designation expires the Treasury must notify the designated person in writing and take reasonable steps to bring that fact to the attention of other persons who were informed of the designation.

#### **Duration of interim designations**

- 29. Clause 22** states that an interim designation expires 30 days after the day on which it was made or on the making of a final designation in relation to the same person (whichever is the earlier). When an interim designation expires similar notice must be given as for a final designation. Where the interim designation expires on the making of a final designation the steps in relation to notification and publicity in respect of the expiry of one and the commencement of the other type of order may be combined.

#### **Variation or revocation of designations**

- 30. Clause 23** empowers the Treasury to vary or revoke a designation at any time. Written notice must be given to the designated person and reasonable steps must be taken to let persons informed of the designation know about the variation or revocation.

## **FINANCIAL RESTRICTION ORDERS DEPENDANT ON ACTION OF UK TREASURY**

### **Financial restriction measures made by the United Kingdom**

- 31. Clause 24** addresses the situation where a freezing order or a designation is made, or a direction effected by the United Kingdom Treasury based on security sensitive material, and it is considered in the interests of the Island to be in step with the United Kingdom in these matters.

Subsection (1) relates to freezing orders or designations and provides that they will have effect in the Island as if made under provisions of this Act. Subsection (2) provides that the fact the United Kingdom has effected a direction is to be taken as sufficient for the Treasury to form the same reasonable suspicion or reasonable belief (and consequently may likewise effect a direction).

Subsection (3) provides that if a direction made by the United Kingdom is set aside, ceases to have effect or is revoked, then any direction made by the Treasury in reliance on the action of the United Kingdom Treasury is treated likewise.

Subsections (4) and (5) empower the Treasury to amend this section by order, subject to the approval of Tynwald.

### **PART 3 – ENFORCEMENT**

#### **Power to require information**

- 32. Clause 25** empowers the Treasury to require a financially restricted person to provide it with information about funds or economic resources owned, held or controlled by or on behalf of the financially restricted person. Subsection (2) empowers the Treasury to require information about the financially restricted person's expenditure. Subsection (3) makes it clear that information may only be required for the purposes of monitoring compliance with, or detecting evasion of, the Act.

Further provisions relating to the powers of the Treasury to require information are set out in subsections (5) to (11). These include the power to request information from other persons in or resident in the Island who may have information relating to the financially restricted person. Subsection (6) specifies a requirement for information must be in writing and must set out the reasons why the information is required. A person subject to a written notice may be placed under a continuing obligation to keep the Treasury informed.

#### **Production of documents**

- 33. Clause 26** notes that a notice requiring information under clause 25 may include a requirement to produce certain documents or documents of a specified description (subsection (1)). Where documents are produced the Treasury is empowered to take copies or extracts and require a person to give an explanation in relation to the document.

#### **Offence of failure to comply with requirement for information or documents**

- 34. Clause 27** makes it an offence to fail to comply with a requirement to give information or provide documents. Included within the offence is knowingly or recklessly giving false information, producing documents that are false in any material particular, or otherwise obstructing the Treasury whether by destroying, concealing, defacing or mutilating documents or in any other way. Subsection (3) specifies a penalty on summary conviction (summary penalty) of a term of custody not exceeding 12 months or a fine not exceeding £5,000.

### **Entry, inspection etc. without a warrant**

- 35. Clause 28** is extracted from section 5 of the 2009 Act and empowers an enforcement officer to enter and inspect premises (other than domestic premises) at any reasonable time. The enforcement officer may observe business, inspect or take copies of documents, and require an explanation in relation to any matter relevant to the financially restricted person.

### **Entry to premises under warrant**

- 36. Clause 29** is extracted from section 6 of the 2009 Act and empowers an enforcement officer to apply for a warrant where there are reasonable grounds for believing certain conditions have been met (subsections (2), (3) and (4)). If satisfied that an offence has been, is being, or is about to be committed by a financially restricted person and there is a relevant document on the premises a Justice of the Peace may also grant a warrant on those grounds (subsection (5)).

### **Reporting obligations of relevant institutions**

- 37. Clause 30** imposes reporting obligations on relevant institutions (defined in clause 3) where they have knowledge or reasonable cause for suspicion in relation to financially restricted persons. Subsection (5) makes it an offence subject to summary penalty to fail to comply with the reporting requirements.

### **General power to disclose information or evidence**

- 38. Clause 31** empowers the Treasury to disclose any information or evidence it obtains in the exercise of its functions to the persons or bodies set out in subsection (1). Subsections (2) and (3) define "in person's own right" and "relevant Security Council resolutions". The Treasury may amend subsection (3) by order which has effect subject to the negative Tynwald procedure.

### **Disclosure and the intelligence services**

- 39. Clause 32** provides for disclosure of information or evidence to the British intelligence services. Subsection (2) gives further legal comfort to the person who discloses information or evidence to one of the intelligence services.

### **Information to be kept confidential**

- 40. Clause 33** provides that if the Treasury, further to clause 20(4), informs only certain persons of a designation then it may specify that the information they are given is to be treated as confidential. Subsection (2) expressly prohibits disclosure if the person provided with the information knows or has reasonable cause to suspect that the information is to be treated as confidential.

Subsection (6) provides for the offence and penalty on summary conviction or a term of 2 years custody or a fine or both on conviction on information.

### **Co-operation with local or international investigations**

- 41. Clause 34** requires the Treasury to co-operate with any investigation in the Island or elsewhere relating to the funds etc of a financially restricted person.

### **Application of provisions**

- 42. Clause 35** clarifies that nothing done under clauses 25 to this clause is to be treated as a breach of any legal or other restriction. However, subsection (2) prohibits contravention of the Data Protection Act 2002 or the Interception of Communications Act 1988. Subsection (3) protects privileged information. The disclosure of information or evidence is not otherwise restricted.

## **CIVIL PENALTIES**

### **Power to impose civil penalties**

- 43. Clause 36** and clauses to clause 41 have been extracted from sections 10 to 14 of the 2009 Act. Clause 36 provides that a civil penalty may be imposed by the Treasury on a person who fails to comply with a requirement of a direction or a condition of a licence issued under paragraph 7 of Schedule 1. Subsection (2) does not limit the amount of any civil penalty, which must be appropriate. Subsection (8) defines "appropriate" as "effective, proportionate and dissuasive". Subsection (5) provides that if a person is dealt with by way of a civil penalty under subsections (1) or (2) they may not be subject to criminal proceedings for the same offence under either clause 39 or clause 40.

### **Procedure on imposition of civil penalty**

- 44. Clause 37** sets out the procedure where the Treasury determine to impose a civil penalty on a person for breaching a direction

### **Appeal against imposition of civil penalty**

- 45. Clause 38** provides that a person may appeal against the decision of the Treasury under clause 37. Subsection (2) provides that the court of summary jurisdiction may set aside the Treasury's decision, impose any penalty that the Treasury could have imposed or remit the matter back to the Treasury.

## **OFFENCES IN CONNECTION WITH DIRECTIONS**

### **Contravention of requirement imposed by direction**

- 46. Clause 39** provides for the prosecution of a person who breaches a requirement of a direction. Subsection (2) states that no offence is committed if reasonable steps were taken, including due diligence, to comply with the direction. If any relevant guidance has been followed then the court must take that into account when deciding whether or not an offence has been committed. Subsection (5) states that if a person is convicted of an offence under this provision the person cannot be liable for a civil penalty under clause 36 in connection with the same matter.

### **Relevant person circumventing direction requirements**

- 47. Clause 40** makes it an offence for a person to whom a direction is given to knowingly participate in any activity the object or effect of which is, or will be, to circumvent a requirement of a direction.

### **Offences in connection with licences**

- 48. Clause 41** makes it an offence to provide false information for the purposes of obtaining a licence which would exempt the person from requirements of a direction limiting or requiring the cessation of business.

## **OFFENCES IN CONNECTION WITH FREEZING ORDERS**

### **Offences**

- 49. Clause 42** makes it an offence to contravene a requirement of a freezing order or to engage in activity knowing or intending it will enable or assist in a contravention by another person.

## **Defence**

- 50. Clause 43** provides a defence where the person can show they did not know, and had no reason to suppose, that the person to whom or for whose benefit funds were (or were to be) made available, was the person (or one of the persons) specified in a freezing order.

## **OFFENCES IN CONNECTION WITH DESIGNATIONS**

### **Freezing of funds and economic resources**

- 51. Clause 44** makes it an offence, subject to clauses 50 and 51 (exceptions and licences), for a person to deal with funds or economic resources owned, held or controlled by a designated person. The provision is drawn from section 11 of the UK Terrorist Asset-Freezing etc Act 2010 as applied to the Island in 2011 by Order in Council<sup>1</sup> (Order in Council).

### **Making funds or financial services available to a designated person**

- 52. Clause 45** prohibits, subject to clauses 50 and 51 (exceptions and licences), a person from making funds or financial services available to a designated person or a person they have reasonable cause to suspect is such. This clause is drawn from section 12 of the Order in Council.

### **Making funds or financial services available for the benefit of a designated person**

- 53. Clause 46** prohibits, subject to clauses 50 and 51 (exceptions and licences), the making available of funds or financial services to any person for the benefit of a designated person and is drawn from section 13 of the Order in Council.

### **Making economic resources available to a designated person**

- 54. Clause 47** prohibits making economic resources available to a designated person, subject to clause 51 (licences).

### **Making economic resource available for the benefit of a designated person**

- 55. Clause 48** is similar to clause 47 except that it is designed to prevent a person from making economic resource available to any person for the benefit of a designated person.

### **Circumventing prohibitions etc.**

- 56. Clause 49** provides that a person commits an offence if they intentionally participate in activities they know have the object of circumventing, or facilitating the circumvention of, the prohibitions set out above in clauses 44 to 48.

### **Exceptions**

- 57. Clause 50** provides exceptions where an institution credits a frozen account with the interest or other earnings due to it or payments under contracts, agreements or relating to other obligations that were concluded or arose before the account was frozen. Furthermore, subsection (3) permits the making of a payment that is a benefit relating to social security and is made to a person who is not a designated person.

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<sup>1</sup> The Terrorist Asset-Freezing etc Act 2010 (Isle of Man) Order 2011 (SI 2011/749)

## **Licences**

- 58. Clause 51** specifically exempts anything done under the authority of a licence granted by the Treasury from the prohibitions set out in clauses 44 to 48. Subsection (3) sets out what must be specified in a licence, to whom it may be granted, under what conditions and for an indefinite or specified duration. The licence may be varied or revoked by the Treasury at any time and in any event the Treasury must give written notice of the grant, variation or revocation of the licence. Subsection (6) and (7) make it an offence to knowingly or recklessly provide false information or, if purporting to act under the authority of a licence, to fail to comply with any condition included in the licence.

## **Penalties for prohibition offences**

- 59. Clause 52** sets out the penalty for offences under clauses 44, 45, 46, 47, 48 or 49 as a maximum of 7 years custody or a fine or both on information or a maximum of 12 months custody, or a fine not exceeding £5,000 or to both. Subsection (2) provides that in respect of clause 51 a person is liable on information to custody for a period not exceeding 2 years or to a fine or to both or to a summary penalty.

## **OFFENCES: GENERAL PROVISIONS**

### **Liability of officers of bodies corporate, etc.**

- 60. Clause 53** is clear that if a body corporate is found guilty of an offence under this legislation and the offence was committed with the consent or connivance, or is attributable to the neglect, of an officer of the body corporate, the officer as well as the body corporate is liable to the penalty provided for the offence. Subsection (5) provides further definition as to what kind or category of person may be included in the definition of an "officer". This provision is drawn from section 17 of the 2009 Act.

### **Proceedings against unincorporated bodies**

- 61. Clause 54** details how proceedings are to be brought against a partnership or other unincorporated association. This provision was drawn from section 18 of the 2009 Act.

### **Offences committed outside the Island**

- 62. Clause 55** provides for extra-territorial jurisdiction for offences committed outside the Island. This ensures that where a resident or a person acting in the course of business commits an offence partly or wholly outside the Island (that is or equates to an offence under this Act) that resident or person may be proceeded against as if the offence had been committed in the Island. In international terms this kind of provision is important because it reassures the international community that terrorism related offences can be combated by the competent authorities of the Island regardless of where an offence is committed. In other words a resident or a person in the course of business cannot commit offences in another territory, and then evade justice by returning to the Island.

### **Time limit for summary proceedings**

- 63. Clause 56** provides a time limit for the commencement of summary proceedings. These must be brought within 3 years of the commission of the offence and within 12 months of the date on which sufficient evidence is before the prosecutor to justify the proceedings.

## **PART 4 – SUPERVISION OF EXERCISE OF POWERS**

### **Application to court in relation to financial restriction orders**

- 64. Clause 57** applies to any decision of the Treasury in exercising its functions under the Al-Qa'ida and Taliban (United Nations Measures) (Isle of Man) Order 2002 and the various financial restriction provisions set out in Part 2 (clauses 6 to 24 inclusive). Subsection (2) states that any person affected by such a decision may apply to the High Court to set aside the decision.

Subsection (3) does not permit an application where the Treasury formed a reasonable belief regarding risk to the interests of the Island based on a measure effected by the United Kingdom as described in clause 24(2). Subsections (4) to (9) set out procedure and specify that the fact an appeal is made does not suspend the effect of the decision to which the appeal relates. Of course the court may, in determining an appeal, set aside the decision of the Treasury and if it does so it must quash the relevant direction or order. Subsections (10) and (11) provide that the Treasury may by order amend subsection (1) relating to certain Orders in Council made under section 1 of the United Nations Act 1946 (of Parliament) and may even remove an Order in Council. Such an order made by the Treasury is subject to the negative Tynwald procedure.

### **Appeals and reviews: supplementary**

- 65. Clause 59** states that clauses 60 to 62 apply to proceedings arising from an application under clauses 57 or 58 or any appeal from such an application. This and clauses 60 to 62 have been drawn from the 2009 Act.

### **General provisions about rules of court**

- 66. Clause 60** sets out, in detail, general provisions concerning rules of court that may be made with respect to appeals and reviews of decisions made by the Treasury. It is drawn from section 25 of the 2009 Act.

### **Rules of court about disclosure**

- 67. Clause 61** provides specific guidance about what any rules of court must achieve and is based on section 26 of the 2009 Act. Rules of court must ensure the Treasury is required to disclose the material on which it relies, any material that adversely affects its case and any material which supports the case of a party to the proceedings. Subsection (1) is subject to subsection (2).

Subsection (2) is important because it addresses the issue of disclosure where if the Treasury were to make such disclosure it would or may be detrimental to the public interest (e.g. national security). Subsections (3) and (4) deal with how rules must address disclosure if the Treasury finds itself unable to disclose all or some of the material relevant to a particular case.

Subsection (5) confirms the court is not required to act in a manner inconsistent with Article 6 of the Convention on Human Rights and subsection (6) clarifies that a party to the proceedings in this section does not include the Treasury and reference to a party's legal representative does not include the person appointed as a special advocate.

### **Appointment of a special advocate**

- 68. Clause 62** gives power to the Attorney General to appoint a person as a special advocate to represent the interests of a party to the proceedings in those cases where the party and any legal representative of the party is excluded from any part of the proceedings. This clause is based on section 27 of the 2009 Act.

### **PART 5 – SUPPLEMENTARY**

#### **Delegation of Treasury functions**

- 69. Clause 63** empowers the Treasury to delegate any of its functions under the Act, except the power to make orders, to any organisation in the Island responsible for preventing or investigating financial crime and the financing of terrorism. An order under this section is subject to the negative Tynwald procedure. This provision will enable the Treasury to delegate enforcement functions to a relevant body such as, for example, the Financial Crime Unit of the Isle of Man Constabulary or any successor organisation.
- 70. Clause 64** sets out the procedure for the giving of any notice required to be given under this Act. This includes giving it to the person, posting it to the person's address, their last known address or, where all other means have failed and an electronic address is available, by electronic means.

#### **Report to Tynwald**

- 71. Clause 65** follows the requirement in section 19 of the 2009 Act for the Treasury to report annually to Tynwald on the exercise of its functions or to state that it has not exercised its functions, if that is the case. Where the Treasury has delegated its functions to another organisation under clause 63 it must include the exercise of those functions in its report.

#### **Supervision by relevant supervisory authority**

- 72. Clause 66** requires a relevant supervisory authority to take appropriate steps to monitor persons acting in the course of the regulated sector to ensure they comply with the requirements of a direction. A relevant supervisory authority is one specified in paragraph 2 of Schedule 4 to the Proceeds of Crime Act 2008. This provision is drawn from section 20 of the 2009 Act.

#### **Assistance in preparing guidance**

- 73. Clause 67** requires the Treasury to assist a relevant supervisory authority or other appropriate body drawing up guidance that would be relevant guidance when issued and published for the purposes of the Act. This is drawn from section 21 of the 2009 Act.

#### **Codes relating to the financing of proliferation and terrorism**

- 74. Clause 68** is drawn from section 27A of the 2009 Act. The difference is that it now refers to the financing of proliferation and terrorism and is subject to the negative Tynwald procedure. The addition of the power to make codes in relation to this matter is another element in the Island, as a responsible jurisdiction, ensuring its legal powers and standards meet international expectations.

### **Power to apply certain Orders in Council to the Island**

- 75. Clause 69** empowers the Council of Ministers to apply to the Island with such modifications as it considers appropriate any Order in Council made under the United Nations Act 1946 (of Parliament). This is in relation to the implementation of United Nations resolutions dealing with international terrorism, conflict, crime against humanity and related matters. Any order made by Council is subject to the positive Tynwald procedure.

### **Crown application**

- 76. Clause 70** applies the Act to the Crown.

### **Amendments to the Anti-Terrorism and Crime Act 2003**

- 77. Clause 71** says that amendments to the 2003 Act are set out in Schedule 3.

### **Schedule 3**

Paragraph 1 of the Schedule slightly but significantly amends the definition of terrorism set out in section 1 of the 2003 Act. The Department has been made aware that the current definition is capable of being read as implying the commission of a Convention offence is only terrorism if the conditions in subsection (1) are met. It is recognised the commission of a Convention offence will have the same effect on persons as an act carried out with the specific aim of terrorising persons or promoting a terrorist cause. Section 1 is therefore amended in part by substitution so it is clear that any activity in subsections (1)(b) and (2) is an offence whether or not it is carried out with the intention or purpose set out in subsection (1)(a). A Convention offence mentioned in paragraph (b) of subsection (1) is set out in Schedule 13A to the 2003 Act.

Paragraph 2 amends the requirement in section 2 of the 2003 Act to publish amended lists of Proscribed Organisations so that they must be published electronically rather than in two newspapers published and circulating in the Island.

Paragraphs 3 and 4 deal with the offences of facilitating funding and money laundering. In relation to the offence of facilitating funding it is currently an offence to fail to exercise due diligence or adequately investigate whether the money is or will be used for terrorist purposes. It is recognised that the exercise of due diligence is sufficient and is a realistic expectation on business. In the case of money laundering the defence of neither knowing nor having reasonable suspicion that property is terrorist property has been reinserted into section 10.

Paragraph 5 amends sections 11 and 14 of the 2003 Act so that they refer to section 4 of the Proceeds of Crime Act 2008 in respect of the definition of business in the regulated sector. This amendment will ensure that the same definition of business in the regulated sector applies both in respect of terrorism offences and ordinary criminal offences.

Paragraph 6 amends references to the disclosure of information so that they now refer to information or evidence. This takes account of a legal opinion in a matter which identified that there can be a difference in law between the two.

Paragraph 7 inserts a considerable amount of material designed to place further safeguards on the police power of stop and search in relation to terrorism. Safeguards include the requirement to make a code about the exercise of the power and a new Schedule 8B is inserted to control the power to search in specified areas or places.

Paragraph 8 clarifies the provisions relating to search warrants by limiting the life of warrants under Schedule 5 of the 2003 Act to 3 months.

Paragraph 9 removes the limitation on the duration of the 2003 Act by substituting section 82.

### **Amendment to the Proceeds of Crime Act 2008**

- 78. Clause 72** makes a number of amendments to the Proceeds of Crime Act 2008. In subsection (1) the offence is changed from being involved in arrangements relating to criminal property to facilitating the acquisition, redemption, use or control of criminal property by or on behalf of another person.

Subsection (2) ensures the penalty for breaching a provision of a code of practice in respect of money laundering is the same as applies for breaching a code of practice in respect of the countering of the financing of terrorism or proliferation.

Subsections (3) and (4) are about ancillary money laundering offences.

Subsection (5) inserts subsection (5) into section 223 so codes of practice are made subject to the negative Tynwald procedure.

### **Repeals**

- 79. Clause 73** deals with the expiry of certain provisions of this Act and repeals the provisions set out in Schedule 4. These include the repeal of the 2009 Act in its entirety and Part VII (relating to freezing orders) of the 2003 Act as their provisions are now incorporated in this Bill.