

Statutory Document No. 2019/0397



*Proceeds of Crime Act 2008*

## **PROCEEDS OF CRIME ACT (COMPLIANCE WITH INTERNATIONAL STANDARDS) (NO.3) ORDER 2019**

*Draft laid before Tynwald:*

*Draft approved by Tynwald:*

*Coming into Operation: in accordance with article 2*

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.3) 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 145 (tipping off: regulated sector) —

(a) for subsection (1), substitute —

☐(1) A person commits an offence if the person discloses any matter within subsection (2). ☐;

(b) for subsection (3) substitute —

☐(3) A person commits an offence if the person discloses that an investigation into allegations that an offence under this Part has

<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) states that no order may be made under subsection (1) 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”.

- been committed, is being contemplated or is being carried out. **22**;  
and
- (c) after subsection (3), insert —
- 23**(3A) To avoid doubt, an offence is committed under subsections (1) and (3) whether or not the person’s actions result in prejudice to an investigation. **22**.
- (3) In section 146 (disclosures within an undertaking or group, etc.) —
- (a) in subsection (2), in both places, for “a credit institution or a financial institution”, substitute **23** a financial institution **22**;
- (b) for subsection (2)(b), substitute —
- 23**(b) the financial institution to whom the disclosure is made is situated in an approved country or territory; and **22**; and
- (c) for subsection (4)(b), substitute —
- 23**(b) both the person making the disclosure and the person to whom it is made carry on business in an approved country or territory; and **22**.
- (4) In section 147 (other permitted disclosures between institutions, etc.) —
- (a) omit subsection (1)(a); and
- (b) for subsection (2)(c), substitute —
- 23**(c) the financial institution or adviser to whom the disclosure is made is situated in an approved country or territory; and **22**.
- (5) Section 148(3) and (4) (other permitted disclosures, etc. – defence) is omitted.
- (6) In section 149 (interpretation of sections 145 to 148) —
- (a) in subsection (2), for “the expressions “credit institution” and “financial institution” are”, substitute **23** “financial institution” is **22**;
- (b) in subsection (3), for “a credit institution or a financial institution”, substitute **23** a financial institution **22**;
- (c) after subsection (4), insert —
- 23**(4A) In those sections “an approved country or territory” means a country or territory specified on a list maintained for the purpose and published by the Department of Home Affairs, which may include reference to a prescription made from time to time by an international body within the meaning of section 222A. **22**; and
- (d) for subsection (5), substitute —
- 23**(5) The Department of Home Affairs must by order prescribe what is a financial institution, for the purposes of sections 145 to 148. **22**.

- (7) In section 160 (offences of prejudicing investigation) after subsection (3)(b), insert –
- ▣(ba) the disclosure is of a matter within section 145(1) or (3) (tipping off: regulated sector) and the information on which the disclosure is based came to the person in the course of a business in the regulated sector; or ▣.
- (8) In section 199(3) (other interpretative provisions for Part 4), in the definition of “financial institution”, for “149(6) substitute ▣149(5) ▣.

**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 Recommendation in response to which the amendments are made includes the need to address deficiencies in FATF Recommendation 21 – Tipping Off and Confidentiality, which requires that relevant parties “... *should be prohibited by law from disclosing the fact that a STR or related information is being filed with the Financial Intelligence Unit.*” The Mutual Evaluation Report, as did the previous assessment carried out by the International Monetary Fund in 2008, noted that the offence of tipping off was too narrow in that it only applied where the disclosure is likely to prejudice any investigation that might be conducted following the receipt of a suspicious transaction report by the Financial Intelligence Unit.

Other amendments are intended to assist with the legitimate disclosure of information within group companies. In connection with these changes, the mechanism regarding the list of prescribed equivalent countries or jurisdictions within which the group companies must be located has been simplified so as to ensure that the list quickly reflects the findings or rulings made by relevant international bodies regarding such jurisdictions.