

Statutory Document No. 2019/0398



Anti-Terrorism and Crime Act 2003

ANTI-TERRORISM AND CRIME ACT (COMPLIANCE WITH INTERNATIONAL STANDARDS) 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 appropriate¹, makes the following Order under section 76B of the Anti-Terrorism and Crime Act 2003.

1 Title

This Order is the Anti-Terrorism and Crime Act (Compliance with International Standards) Order 2019.

2 Commencement

If approved by Tynwald, this Order comes into operation on the day after it is approved².

3 Anti-Terrorism and Crime Act 2003 amended

(1) The Anti-Terrorism and Crime Act 2003 is amended as follows.

(2) After section 13, insert —

13A Arrangements with prior consent

P2000/11/21ZA

(1) A person does not commit an offence under any of sections 7, 8, 9, 9A or 10 by involvement in a transaction or an arrangement

¹ Consultation is required under section 76B(5)(a) of the Anti-Terrorism and Crime Act 2003.

² Section 76B(5)(b) states that no order under subsection (1) may be made unless “(b) 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.”

relating to money or other property if, before becoming involved, the person —

- (a) discloses to the FIU the person's suspicion or belief that the money or other property is terrorist property and the information on which the suspicion or belief is based; and
- (b) has the consent of the FIU to becoming involved in the transaction or arrangement.

(2) A person is treated as having the consent of the FIU if before the end of the notice period the person does not receive notice from the FIU that consent is refused.

(3) The notice period is the period of 7 working days starting with the first working day after the person makes the disclosure.

(4) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday under the *Bank Holidays Act 1989*.

(5) The reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

13B Disclosure after entering into arrangements

P2000/11/21ZB

(1) A person does not commit an offence under any of sections 7, 8, 9, 9A or 10 by involvement in a transaction or an arrangement relating to money or other property if, after becoming involved, the person discloses to the FIU —

- (a) the person's suspicion or belief that the money or other property is terrorist property; and
- (b) the information on which the suspicion or belief is based.

(2) This section applies only where —

- (a) there is a reasonable excuse for the person's failure to make the disclosure before becoming involved in the transaction or arrangement; and
- (b) the disclosure is made on the person's own initiative and as soon as it is reasonably practicable for the person to make it.

(3) This section does not apply to a person if —

- (a) the FIU forbids the person to continue involvement in the transaction or arrangement to which the disclosure relates; and
- (b) the person continues that involvement.

- (4) The reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

13C Reasonable excuse for failure to disclose

P2000/11/21ZC

It is a defence for a person charged with an offence under any of sections 7, 8, 9, 9A or 10 to prove that —

- (a) the person intended to make a disclosure of the kind mentioned in section 13A or 13B; and
- (b) there is a reasonable excuse for the person's failure to do so. **22**.

- (3) After section 15, insert —

15ZA Tipping off: regulated sector

P2000/11/21D

- (1) A person commits an offence if the person discloses any matter within subsection (2).
- (2) The matters are that the person or another person has made a disclosure under a provision of this Part —
- (a) to the FIU;
- (b) in accordance with a procedure established by that person's employer for the making of disclosures under that provision; or
- (c) to a nominated officer,
- of information that came to that person in the course of a business in the regulated sector.
- (3) A person commits an offence if the person discloses that an investigation into allegations that an offence under this Part has been committed, is being contemplated or is being carried out.
- (4) 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.
- (5) A person guilty of an offence under this section is liable —
- (a) on summary conviction to custody for a term not exceeding 3 months, or to a fine not exceeding level 5 on the standard scale, or to both;
- (b) on conviction on information to custody for a term not exceeding 2 years, or to a fine, or to both.
- (6) This section is subject to —

- (a) section 15ZB (disclosures within an undertaking or group etc);
- (b) section 15ZC (other permitted disclosures between institutions etc); and
- (c) section 15ZD (other permitted disclosures etc).

15ZB Disclosures within an undertaking or group etc

P2000/11/21E & 2008/13/146

- (1) An employee, officer or partner of an undertaking does not commit an offence under section 15ZA if the disclosure is to an employee, officer or partner of the same undertaking.
- (2) A person does not commit an offence under section 15ZA in respect of a disclosure by a financial institution if —
 - (a) the disclosure is to a financial institution;
 - (b) the financial institution to whom the disclosure is made is situated in an approved country or territory; and
 - (c) both the institution making the disclosure and the institution to which it is made belong to the same group.
- (3) In subsection (2), “group” is to be construed in accordance with any order made by the Department under section 146(5) of the *Proceeds of Crime Act 2008*.
- (4) A professional legal adviser or a relevant professional adviser does not commit an offence under section 15ZA if —
 - (a) the disclosure is to a professional legal adviser or a relevant professional adviser;
 - (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
 - (c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

15ZC Other permitted disclosures between institutions etc

P2000/11/21F & 2008/13/147

- (1) This section applies to a disclosure —
 - (a) by a financial institution to another financial institution;
 - (b) by a professional legal adviser to another professional legal adviser; or
 - (c) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

- (2) A person does not commit an offence under section 15ZA in respect of a disclosure to which this section applies if —
 - (a) the disclosure relates to —
 - (i) a client or former client of the institution or adviser making the disclosure and the institution or adviser to whom it is made;
 - (ii) a transaction involving them both; or
 - (iii) the provision of a service involving them both;
 - (b) the disclosure is for the purpose only of preventing an offence under this Part;
 - (c) the institution or adviser to whom the disclosure is made is situated in an approved country or territory; and
 - (d) the institution or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of Parts 6 to 8 of the GDPR and LED Implementing Regulations 2018³ as amended from time to time (see regulation 5 of those Regulations)).

15ZD Other permitted disclosures etc

P2000/11/21G & 2008/13/148

- (1) A person does not commit an offence under section 15ZA if the disclosure is —
 - (a) to the authority that is the supervisory authority for that person;
 - (b) for the purpose of —
 - (i) the detection, investigation or prosecution of a criminal offence (whether in the Island or elsewhere);
 - (ii) an investigation under the *Proceeds of Crime Act 2008*; or
 - (iii) the enforcement of any order of a court under that Act.
- (2) A professional legal adviser or a relevant professional adviser does not commit an offence under section 15ZA if the disclosure —
 - (a) is to the adviser's client; and

³ SD2018/0145

- (b) is made for the purpose of dissuading the client from engaging in conduct amounting to an offence.

15ZE Interpretation of sections 15ZA to 15ZD

P2000/11/21H & 2008/13/149

- (1) The references in sections 15ZA to 15ZD —
 - (a) to a business in the regulated sector; and
 - (b) to a supervisory authority;are to be construed in accordance with Schedule 4 to the *Proceeds of Crime Act 2008*.
 - (2) In those sections “financial institution” is to be construed in accordance with an order made by the Department under section 149(5) of the *Proceeds of Crime Act 2008*.
 - (3) References in those sections to a disclosure by or to a financial institution include disclosure by or to an employee, officer or partner of the institution acting on its behalf.
 - (4) In those sections “relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for —
 - (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
 - (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.
 - (5) 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, which may include reference to a prescription made from time to time by an international body within the meaning of section 76B. ~~22~~.
- (4) In section 27 (disclosure to prejudice terrorist investigations) —
- (a) omit subsections (3) and (4);
 - (b) in subsection (5) —
 - (i) omit “or (4)”; and
 - (ii) after paragraph (b), insert —
~~23~~, or
 - (c) that, in the case of an offence under paragraph (a) of subsection (2), the disclosure is of a matter within section

- 15ZA(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. **22**; and
- (c) in subsection (6), for “Subsections (2) and (4) do”, substitute **23**Subsection (2) does **24**.

MADE

W GREENHOW
Chief Secretary

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

This Order amends the *Anti-Terrorism and Crime Act 2003* (“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 76B 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.