

Explanatory Memorandum for Tynwald Members

Issued by the Treasury

**To The Hon Stephen Rodan MLC, President of Tynwald and the Hon Council and
Keys in Tynwald assembled**

Tynwald – December 2020

1. TITLE OF MEASURE

The following 21 Regulations apply United Kingdom Statutory Instruments made under the Sanctions and Anti-Money Laundering Act 2018 (of Parliament) which will replace the existing European Union Sanctions Regulations which currently have effect in the Island, as a consequence of the United Kingdom's departure from the European Union

- Iran Sanctions (Human Rights) (Application) Regulations 2020
- Venezuela Sanctions (Application) Regulations 2020
- Burma Sanctions (Application) Regulations 2020
- Democratic Republic of the Congo Sanctions (Application) Regulations 2020
- South Sudan Sanctions (Application) Regulations 2020
- Iran Sanctions (Nuclear) (Application) Regulations 2020
- ISIL (Da'esh) and Al-Qaida (United Nations) Sanctions (Application) Regulations 2020
- Republic of Belarus Sanctions (Application) Regulations 2020
- Zimbabwe Sanctions (Application) Regulations 2020
- Central African Republic Sanctions (Application) Regulations 2020
- Somalia Sanctions (Application) Regulations 2020
- Sudan Sanctions (Application) Regulations 2020
- Lebanon Sanctions (Application) Regulations 2020
- Afghanistan Sanctions (Application) Regulations 2020
- Syria Sanctions (Application) Regulations 2020
- Democratic People's Republic of Korea Sanctions (Application) Regulations 2020
- Iraq Sanctions (Application) Regulations 2020
- Counter-Terrorism (International) Sanctions (Application) Regulations 2020
- Russia Sanctions (Application) Regulations 2020
- Syria (United Nations Sanctions) (Cultural Property) (Application) Regulations 2020
- Yemen Sanctions (Application) (No. 2) Regulations 2020

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2. CHANGES IN POLICY

The Isle of Man Government's policy in relation to sanctions:

"It is the policy of the Isle of Man Government to maintain the implementation of international sanctions measures in the Isle of Man in line with such measures as have effect in the United Kingdom from time to time."

The policy was revised in July 2019 in part to align more closely with United Kingdom policy on sanctions, as a consequence of the United Kingdom's departure from the European Union.

3. EFFECTS OF THE MEASURES

The Regulations are being made for the purposes of compliance with United Nations obligations and other international purposes, such as the prevention of terrorism, national security, promoting international peace and security, promoting compliance with international human rights law and respect for human rights. There are no new sanctions regimes being introduced by these Regulations, they will replace, with substantially the same effect, the European Union Sanctions Regulations which already have effect in the Island.

The Regulations provide that a person designated by the Secretary of State from time to time is a designated person for the purpose of the United Kingdom Sanctions Regulations as they have effect in the Island.

The effects of the Regulations are –

- the imposition of asset freezes on funds and economic resources of designated persons,
- travel bans which ban designated persons from travelling to or via the IOM/UK, and
- trade sanctions to restrict the trade in certain goods and technology,
- shipping sanctions which prohibit certain vessels from entering Isle of Man ports and prohibiting the supply of certain services relating to shipping, and
- transport sanctions in relation to certain aircraft, such as the prohibiting the landing of aircraft from North Korea in the Isle of Man.

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The Regulations make provision in respect of exceptions and licences that may apply or be available, as the case may be, in respect of prohibitions and requirements under the regimes. For example, a designated person can apply for a licence from the Treasury allowing funds to be released in order to pay for essential goods or services such as food.

The Regulations also confer powers on the Treasury and on maritime enforcement officers to deal with the contravention, or deemed contravention of the sanctions.

Aircraft and Shipping Sanctions

The sanctions regimes concerning Syria and the Democratic People's Republic of Korea/North Korea ("DPRK") do contain additional powers to those contained in EU law. These regimes contain some of the largest range of sanctions, and in particular they contain aircraft and shipping sanctions which -

- prohibit or restrict the landing of certain aircraft in the Island;
- provides a power to air traffic control to give directions to certain aircraft related to those countries to not enter or to leave the Isle of Man airspace;
- provides a power to the airport to give directions to certain aircraft not to take off or land in the Isle of Man;
- prohibit or restrict the entry into port of certain ships connected with DPRK;
- provides a power to the Department of Infrastructure to give directions to certain ships in relation to its movement;
- provides a power to the Department of Infrastructure to give a detention direction in relation to a specific ship, and connected powers to maritime enforcement officer to detain that ship;
- provides a power to the Department for Enterprise (in relation to the Ship Registry) to refuse registration of certain ships related to the DPRK regime.

However, in addition to these provisions, the **Secretary of State** in the United Kingdom is also provided with certain powers to give directions to -

- the Department for Enterprise (in relation to the Aircraft Registry) to refuse permissions on the carriage of certain goods or passengers and aerial photography, and (in relation to the Ship Registry) to terminate the registration of certain ships;
- the airport to give a direction to an aircraft;

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- air traffic control to give a direction to an aircraft;
- certain ships relating to the DPRK regime to not enter an Isle of Man port;
- the Department of Infrastructure (in relation to harbours) to prevent a port entry of certain ships;
- certain ships relating to the DPRK regime in relation to ship movements;
- the Department of Infrastructure (in relation to harbours) to steps to ensure certain ships follow the directions (including detention directions);
- certain ships relating to the DPRK regime that it is to be detained.

The powers given to the Secretary of State are unusual in Manx law, but not unprecedented. There are existing provisions in UK law which extend powers of the Secretary of State to the Island by an Order in Council - often where there are international obligations. In this situation, such powers could be extended by Order in Council under provisions in the Sanctions and Anti-Money Laundering Act 2018, but at the present time this cannot be completed in time for the end of the transition period. This matter has been discussed at length with the Attorney General's Chambers and UK officials. In reality, it is highly unlikely that any aircraft or ships relating to either regime would come to the Island, or enter Island airspace or sea; however, in order to remain as closely aligned with the UK as possible, and to fulfil the United Nations obligations, these provisions were considered to be necessary, at least in the short term.

The Regulations also revoke a number of Orders and Regulations which previously applied European Union sanctions law to the Island, and will no longer be required at the end of the implementation period.

4. REASONS FOR THE MEASURES

The Isle of Man currently implements United Nations and European Union financial and trade sanctions by virtue of the European Communities (Isle of Man) Act 1973, either through the direct application of European Union Sanctions Regulations under section 2(1), or by the application of European Union Sanctions Regulations under section 2A.

At the end of the transition period, the United Kingdom Sanctions Regulations made under the Sanctions and Anti-Money Laundering Act 2018 (of Parliament) will come

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into force in the UK. As a result, the corresponding European Union Sanctions Regulations, which had previously applied automatically to the United Kingdom, will no longer have effect there.

The Isle of Man Government's policy in relation to sanctions:

"It is the policy of the Isle of Man Government to maintain the implementation of international sanctions measures in the Isle of Man in line with such measures as have effect in the United Kingdom from time to time."

The policy was revised in July 2019 in part to align more closely with United Kingdom policy on sanctions, as a consequence of the United Kingdom's departure from the European Union. The Foreign and Commonwealth Office have been liaising with the Cabinet Office and the Treasury with regard to the policy.

The Island had already taken steps to ensure that the financial and trade sanctions will continue to operate effectively post-transition by retaining direct European Union Sanctions Regulations and making the appropriate modifications to the sanctions regimes¹; however, in order to be more closely aligned with the United Kingdom, it has been deemed appropriate and necessary to apply the new United Kingdom Sanctions Regulations to the Island.

The Regulations put forward are the second tranche of a number of Sanctions Regulations and relate to financial, trade aircraft and shipping sanctions. 10 Regulations were approved by Tynwald at the November 2020 sitting. There are currently 32 United Kingdom sanctions regimes, of which one, the Global Human Rights sanctions regime already has effect in the Isle of Man².

The names of individuals and entities which are subject to the United Kingdom Sanctions Regulations will be published on gov.uk. Consequently, as a result of applying these Sanctions Regulations to the Island, the lists will also have effect in the Island, as they are amended from time to time. Although the lists are not expected to diverge significantly from the European Union Sanctions Regulations that currently apply, there are anticipated to be some differences and therefore it is important that

¹ SD 2019/0078, SD 2019/0221 and SD 2019/0222.

² SI 2020/774.

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the Island stays in line with the United Kingdom to provide certainty to businesses and persons in the Island.

5. RESOURCE IMPLICATIONS

There are thought to be no resource implications arising directly from these Regulations. The Regulations have substantially the same effect as the European Union Sanctions Regulations that are being replaced. The Customs and Excise Division has been publishing guidance on the changes since November to Island persons to ensure that they are aware of their obligations.

6. TYNWALD PROCEDURE

The power to make these Regulations is contained in the European Union and Trade Act 2019. Regulations made under sections 15 and 19 of that Act are made by the Council of Ministers and cannot come into operation until Tynwald have approved the Regulations.

These Regulations have been vetted by the Attorney General's Chambers following the normal process.