

The Treasury

GD No. 2018/0007

**Terrorism and Other Crime
(Financial Restrictions) Act 2014**

2017 Report

This is a report for the purposes of
Section 65 of the Terrorism and Other
Crime (Financial Restrictions) Act 2014

February 2018



**Isle of Man
Government**

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Section 65 of the Terrorism and Other Crime (Financial Restrictions) Act 2014 requires a report to be laid before Tynwald annually detailing the exercise of functions by Treasury under that Act in the preceding year.



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1 Introduction

- 1.1 Since 2000 the role of administering UN and EU financial sanctions in the Isle of Man has been the responsibility of the Treasury. The Treasury in turn has delegated the work involved to its Customs and Excise Division (CED).
- 1.2 In September 2012, the Treasury formally adopted as a statement of policy that it would maintain the lists of those persons, entities and organisations subject to financial sanctions under applicable UN and EU sanctions so that the lists corresponded to the Consolidated List issued by HM Treasury in the UK. This endorsed a practice that had guided the administration of sanctions since 2001, and followed the publication by the Council of Ministers in July 2012 of "A Commitment to Combating Money Laundering and the Financing of Terrorism and Proliferation", the introduction to which included the following quote by the Chief Minister -

"The Isle of Man Government's commitment to combating money laundering and the financing of terrorism reflects the Island's position as a reputable centre for international financial services. The Isle of Man is proud of the part it has played in helping the international community to protect global financial systems from those who would wish to abuse them to launder money or finance terrorist activities."
- 1.3 On 1 January 2015, the Terrorism and Other Crime (Financial Restrictions) Act 2014 ("the 2014 Act") came into operation. The 2014 Act *inter alia* consolidated and enhanced pre-existing provisions concerned with countering the risk of the financing of terrorism or the proliferation of weapons of mass destruction.
- 1.4 Section 65 of the 2014 Act also replaced the requirements previously found in section 19 of the Terrorism (Finance) Act 2009 (of Tynwald), and section 30 of the Terrorism Asset-Freezing Etc. Act 2010 (of Parliament) for annual reports to be laid before Tynwald each year detailing the exercise of relevant functions by Treasury under those Acts during the preceding year.
- 1.5 In 2015 the Island's anti-money laundering and countering the financing of terrorism (AML/CFT) National Risk Assessment (NRA) included an examination of its financial sanctions activities.
- 1.6 In undertaking the role during the year under review CED co-operated closely with the Cabinet Office, the Isle of Man Constabulary (Police), the Financial Crime Unit (FCU), the Financial Intelligence Unit (FIU), the regulators - the Financial Supervision Authority (FSA) and the Gambling Supervision Commission (GSC) - but also with relevant authorities outside the Island, including HM Treasury.
- 1.7 2016 saw these financial sanctions activities once more scrutinised, as part of the Moneyval evaluation. The Moneyval report, published in January 2017, included recommendations for improving the operation and effectiveness of the sanctions regimes, and to how to deal with terrorism financing and proliferation financing.

Controls to counter terrorism financing and proliferation¹ and its financing can involve UN or EU sanctions measures, including the lists of persons and entities that are subject to a freezing of assets and prohibited or restricted from receiving funds or financial assistance from others.

1.8 Recommendations and observations relevant to the sanctions field made by Moneyval included -

- Ensuring that terrorism financing investigations are carried out systematically upon suspicion, including that arising in connection with reported action regarding targeted financial sanctions;
- Establishing clear lines of communication and adopting the necessary institutional arrangements between the competent authorities (CED, Cabinet Office, the regulators, Police and the FIU) to ensure effective implementation of targeted financial sanctions and a broader counter terrorist financing policy aiming at implementing possible criminal, civil or administrative processes beyond the freezing measures;
- Establishing a more proactive system to promptly notify reporting entities of new sanctions listings;
- For UN Security Council Resolution 1373 (which was passed in the aftermath of the September 2001 attacks and *inter alia* required member states to criminalise terrorist financing activities, freeze terrorist-related assets and prevent funding of terrorists and terrorist organisations), the freezing obligation did not cover a sufficiently broad range of assets under the EU framework;
- There was no publicly available procedures (guidance) to deal with “false positives” (i.e. where possible matches to sanctions list turn out, on further enquiry, not to be the designated person or entity);
- No guidance was available to financial sector and designated non-financial businesses or professions (DNFBP) on obligations in respect of delisting or unfreezing action (i.e. where restrictions are lifted from a designated person or entity), and there is no formal publically known procedure to unfreeze the funds or other assets of persons or entities; and
- Developing a formal policy in respect of countering proliferation risk.

1.9 Even before the NRA had been completed, steps were being taken to deal with various actual or potential difficulties or shortcomings. For example, the new FIU had been created by Act of Tynwald during 2016, to focus and improve the handling of all forms of financial crime intelligence, including that relating to the financing of terrorism and proliferation.

1 Proliferation in this context refers to the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of Chemical, Biological, Radiological or Nuclear (CBRN) weapons and their means of delivery and related materials (including technologies and dual-use goods), and hence the term “proliferation” encompasses the acquisition, supply and use of technology, goods, software, services or expertise.

- 1.10 In September 2016, the CED published Notice 1008 MAN, a comprehensive guide to proliferation and proliferation financing, indicators and what might be done to prevent or detect it. Subsequently, in January 2017, new guidance has been issued that provides information on how to deal with the so-called “false positives”.
- 1.11 Notice 1008 MAN (which was further updated in February 2017 with details of a recent report into proliferation typologies) was only one of the most recent examples of the range of guidance and awareness-raising material provided by CED across a range of related areas - financial and trade sanctions, trade-based money laundering, export controls and trafficking and brokering². Internal guidance material for CED staff, covering all of these areas and more, and intended to improve the effectiveness of compliance and assurance activities has also been created or updated. The co-operation arrangements with the FIU and regulators, mentioned below, includes the sharing of this guidance material.
- 1.12 Memoranda of Understanding have been, or are being, drawn up to formalise arrangements for co-operation procedures between the FIU, FCU, regulators and CED; and formal policies on dealing with proliferation, proliferation financing and terrorist financing have been prepared (CED published the Proliferation and Financing of Proliferation Policy Protocol in May 2017). The arrangements themselves had already been modified in the light of the NRA.
- 1.13 Additional specialised training is being provided for FIU and CED staff in terrorist financing, and steps taken to share internal guidance and training material between all the bodies involved.
- 1.14 CED will continue to implement, administer and enforce UN and EU sanctions measures, and provide a central information resource for the FIU, Police and the regulators. It is intended that, from 2018, the FIU will receive and deal with notifications of sanctions “hits”, and of any blocked assets, attempted transactions etc. - as it would with suspicious activity reports (SARs) in respect of suspected money laundering. CED will remain responsible for the investigation of suspected contravention of trade or financial sanctions; and the Police are the lead agency in respect of terrorism and terrorism financing cases.
- 1.15 CED took over responsibility for the drafting of relevant legislation in respect of financial sanctions in November 2017 and continues to work in co-operation with the Cabinet Office to ensure that such legislation is brought into operation in a timely manner.

² These are collected together on a single webpage at <https://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/sanctions-and-export-control/>

2 Functions of the Treasury under Section 65 of the 2014 Act

2.1 The 2014 Act is concerned with various functions that could be exercised by the Treasury. These are:

2.2 Financial Restriction Orders

Made under Part 2 of the 2014 Act, and which can take the form of -

- Directions (interim or final) that could be issued because of the risk of the financing of proliferation or terrorism or money laundering activities and could be given to -
 - (a) a particular person acting in the course of a business in the regulated sector;
 - (b) any description of persons acting in the course of a business in the regulated sector; or
 - (c) all persons acting in the course of a business in the regulated sector.
- Freezing Orders (interim or final) that could be made if the Treasury believed that -
 - (a) action to the detriment of the economy (or part of the economy) of the Island or of any country outside the Island; or action constituting a threat to the life or property of a resident of the Island or a resident of a country outside the Island; and
 - (b) the person or persons concerned is the government of a country outside the Island, or a resident of the Island or a resident of a country outside the Islandor
 - (c) the Treasury has received a request to make a freezing order from an authority outside the Island which appears to the Treasury to have the function of making requests to freeze funds, and considers it appropriate in the circumstances to make the order.
- Designations (final or interim) of individuals, organisations or entities for the purpose of freezing their assets.

These are applied in the Island to those individuals, organisations and entities included on the UK Consolidated List for reasons connected to terrorism or terrorist activity (which would also include those in the list provided for by Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism). The designations would therefore apply to those subject to United Nations or European Union sanctions, or subject to similar restrictions by virtue of a decision of the UK Government.

The Treasury is also able to make a designation if it reasonably believes -

- (a) that the person is or has been involved in terrorist activity;
- (b) that the person is owned or controlled directly or indirectly by such a person; or
- (c) that the person is acting on behalf of or at the direction of such a person;

and it considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.

2.3 Enforcement

Part 3 of the 2014 Act is concerned with -

- powers to require information or documents;
- disclosure of information and co-operation with other agencies;
- civil penalties for breach of Directions; and
- offences in connection with Directions, Freezing Orders and Designations.

3 Other matters of relevance

3.1 Part 4 of the 2014 Act is concerned with the supervision of the use of the powers available under the Act.

3.2 Part 5 of the 2014 Act deals with such matters as -

- the delegation by Treasury of its functions;
- the requirement to submit an annual report to Tynwald about the exercise of the functions by Treasury in the preceding year;
- co-operation between Treasury and the supervisory bodies (such as the FSA and the GSC); and
- the preparation of codes by the Department of Home Affairs concerned with the financing of terrorism or proliferation.

3.3 Part 5 also contains a power to apply in Island law any order in council made in the UK under the United Nations Act 1946 which is concerned with the implementation of United Nations' resolutions relating to international terrorism, conflict, crime against humanity and connected matters.

4 The exercise of the functions under the 2014 Act by the Treasury during 2017

- 4.1 It is important to note that the sanctions regimes, including those dealt with under the 2014 Act, rely in large part on the proper undertaking of responsibilities placed upon financial institutions or other businesses by the legislation. For example, once notified that a person, entity or organisation is subject to an asset freeze, it is for the business to check its customer or client lists, accounts and other records, and to notify CED accordingly. Any assets are blocked or frozen by the business or financial institution concerned, and are not restrained or seized by the Treasury. Other responsibilities would form part of the overall compliance requirements of the business, including record-keeping and making SARs to the FIU as and when required. Compliance would be checked by the regulator of the business, or by officers from CED.
- 4.2 The power to issue a Direction was not exercised during 2017.
- 4.3 No Freezing Orders were issued during 2017.
- 4.4 Designations made under the 2014 Act requiring, for example, a freezing of assets, correspond to those in force in the UK. CED issues news releases as and when required to advise of changes to the lists of those persons and entities designated.
- 4.5 During 2017, CED issued 92 news releases concerned with sanctions, of which 9 involved changes to the lists of those individuals, organisations and entities designated for reasons connected to terrorism, and 23 connected to ISIL/Al-Qaida.
- 4.6 There are currently no funds notified to Treasury as being blocked or frozen for the purposes of the sanctions measures concerned with terrorism or proliferation.
- 4.7 Protocols governing the preparation and issue of Directions (Sanctions Notice 28: January 2015), Freezing Orders (Sanctions Notice 29: August 2015) and Terrorism Sanctions Designations (Sanctions Notice 45: August 2017) exist, these having been prepared by the CED, which also publishes on the Government website a wide range of Public Notices concerned with sanctions, export and trade controls and related matters. These Notices include Sanctions Notice 26 (General Information about Financial Sanctions including Terrorist Financing and Proliferation) and Sanctions Notice 22 (Terrorism), both of which have been regularly updated - most recently September 2017.
- 4.8 In addition, CED recorded 44 "sanctions enquiries", the majority from businesses in the Island which were seeking advice, further guidance or general assistance in relation to some aspect of sanctions implementation.