



Isle of Man
Government

Reiltys Ellan Vannin



Department of Home Affairs

TERRORISM AND OTHER CRIME (FINANCIAL RESTRICTIONS) BILL 2013

SUMMARY OF RESPONSES TO THE CONSULTATION

January 2014

1. The Terrorism and Other Crime (Financial Restrictions) Bill 2013

- 1.1. The aim of the Terrorism and Other Crime (Financial Restrictions) Bill 2013 is to unite the Island's legislation relating to combating the financing of terrorism within one Act and ensure that legislation meets current international standards. A secondary purpose is to update or amend some legislation in the Proceeds of Crime Act 2008 to ensure provisions that deal with similar matters to terrorism (such as codes of practice) are similar.
- 1.2. There are two primary motives for wanting to unite the legislation. Firstly there are three pieces of legislation which deal with financial matters concerned with preventing, or countering, the financing of terrorism and it seemed sensible to try and place these within one Act. Secondly, an undertaking had been given to Tynwald to patriate legislation applied to the Island by Order-in-Council relating to the financial restriction measure known as a "designation" as soon as possible after the General Election in September 2011.
- 1.3. An opportunity has also been taken to make a few other amendments to the Proceeds of Crime Act 2008 and the Anti-Terrorism and Crime Act 2003 to address issues raised by Moneyval¹.

2. The consultation

- 2.1. The Department published the draft Bill and Impact Assessment for consultation on 17th June 2013 and the consultation closed on 31st July 2013.
- 2.2. The consultation document, in line with the Isle of Man Government's Code of Practice on Consultation, was sent directly to persons or organisations including the following –
 - Members of Tynwald;
 - The Attorney General;
 - Local Authorities;
 - Chief Officers of Government Departments, Offices and Statutory Boards;
 - Isle of Man Constabulary;
 - Isle of Man Trades Union Council;
 - Positive Action Group; and
 - Isle of Man Law Society.
- 2.3. The document was also published on the Isle of Man Government's consultation website.

3. Outline and summary of responses to the consultation

- 3.1. The Department received 8 responses to the consultation, of which –
 - five were from Government Departments or Offices;
 - two were from Local Authorities; and
 - one was from the Law Society.
- 3.2. Of these responses, one wished to ensure the legislative requirements were the same, or similar, for preventing the financing of terrorism as for preventing money laundering. Another was concerned with the requirement to "adequately investigate" whether money will be used for terrorism. A further respondent expressed a view concerning the sunset provisions, two expressed no comment and three commented about various drafting matters.

¹ MONEYVAL is a regional organisation, under the auspices of the Council of Europe, which has as its aim ensuring its member states have in place effective systems to counter money laundering and terrorist financing and comply with the relevant international standards in these fields. MONEYVAL uses FATF and UN proposals, rules and recommendations in assessing the standards of compliance by states that are members of the organisation. The Island was subject to a paper based inspection and the report was issued on 13 September 2013 [MONEYVAL42(2013)14 ANALYSIS].

- 3.3. Clause 71 and Schedule 3 makes a change to section 11 of the Anti-Terrorism and Crime Act 2003 to define business in the regulated sector as that set out in Schedule 4 to the Proceeds of Crime Act 2008. Clause 72 of the Bill makes amendments to the Proceeds of Crime Act 2008 designed to ensure that terms, penalties and the Tynwald procedure for the making of codes of practice in preventing money laundering are the same, or similar, as in relation to the power to make codes to counter the financing of terrorism.
- 3.4. The Department considered carefully the question of whether or not to retain the provision in the Bill and in section 82 of the Anti-Terrorism and Crime Act 2003 restricting the duration of each law unless renewed by Order approved by Tynwald. This is known as a "sunset" provision. The Department notes that the international situation regarding the prevalence of terrorism, and the threats posed by terrorism, show no sign of waning. It concluded that the priority must be to monitor developments and update or replace legislation dealing with terrorism as and when necessary. Within the last five years terrorism legislation has been amended twice² and this Bill represents the third review. Each review provides an opportunity for the Branches to consider the legislation in detail and therefore sunset provisions are unnecessary.
- 3.5. Various proofing or drafting issues have been corrected. In relation to one query concerning the definition of "ordinarily resident" in clause 5(1)(a), where not otherwise defined (as in this case) it takes its dictionary meaning.
- 3.6. Finally, clause 72 (subsection (1)) substitutes subsection (1) of section 140 (about facilitating terrorism) of the Proceeds of Crime Act 2008 so that a person is liable if they fail to exercise due diligence. Clause 71 and paragraph 3 of Schedule 3 makes a change of similar effect to section 9(1)(b)(iii). The effect of these changes is to remove the previous additional requirement to "adequately investigate" whether funds were criminal property or would or may be used for the purposes of terrorism. The Department accepts that the requirement to exercise due diligence is a clearly understood and sufficient requirement to prevent the handling of criminal property and ensure terrorist funding is not facilitated.

4. Outcome of the consultation

- 4.1 The Bill was amended accordingly, submitted to the Council of Ministers for authority to print and will be introduced into the House of Keys on 28th January 2014.

January 2014

²Terrorism (Finance) Act 2009 and the Anti-Terrorism and Crime (Amendment) Act 2011.



Isle of Man
Government

Reiltys Ellan Vannin



Copies of this document can be supplied
in a large print or audio format on request

Department of Home Affairs
"Homefield", 88 Woodbourne Road, Douglas, IM2 3AP
Tel.: 694300 E-mail: dhaconsultation@gov.im
www.gov.im/dha/consultations.gov