



Isle of Man
Government

Reiltys Ellan Vannin



Department of Home Affairs

CONSULTATION

Terrorism and Other Crime
(Financial Restrictions) Bill 2013

June 2013

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Foreword by the Minister for Home Affairs

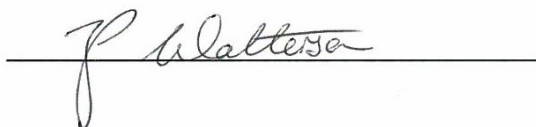
Whilst there is no reason to suppose the Island itself is under any particular threat of physical attack from terrorists, we are acutely aware that our position as an international finance centre may make us a target for laundering their funds. Our reputation for high standards and adopting international benchmarking should discourage such notions, but it is imperative that we keep abreast of the latest developments and our legislation is effective in preventing the flow of terrorist funding from our shores. Thus will our reputation be enhanced.

The immediate background to this Bill is the Terrorist Asset-Freezing Etc., Act 2010 (of Parliament), which was extended to the Island in 2011. When he sought Tynwald approval for the UK Act to be extended to the Island, the then Chief Minister undertook to bring forward Manx legislation, after the 2011 General Election, dealing with this matter¹. The immediate purpose of the Bill is therefore to give effect to that undertaking.

It also appeared sensible to see if it would be possible to place the legislation dealing with the financing of terrorism and the freezing of terrorist assets, currently located within three different laws, within one Act and to streamline as many of the procedures or requirements as possible. The Bill therefore seeks to achieve that aim and makes some other changes to existing legislation as a result of issues identified over time that could be addressed by a Bill such as this.

This document summarises the purpose of the Bill and gives a brief overview, indicating where provisions are the same as before and the reasons for the various amendments to other legislation. If you have any views on either the purpose or the detail of the provisions within the draft Bill I invite you to send them to me, via the Department's Legislation Manager, at the Department of Home Affairs, 88 Woodbourne Road, Douglas, IM2 3AP by **Wednesday 31st July 2013**.

Hon. Juan Watterson, BA(Hons), ACA, MHK
Minister for Home Affairs
18th June 2013



¹ During the sitting of Tynwald held on 16th November 2010.

1. Purpose

- 1.1 The proposed Bill's main purpose is to unite the provisions concerning the prevention of the financing of terrorism into one Act of Tynwald. These are currently located within two Acts and an Order in Council applying an Act of Parliament² to the Island.
- 1.2 Other subsidiary purposes include making some of amendments to the Anti-Terrorism and Crime Act 2003 and the Proceeds of Crime Act 2008.
- 1.3 The Island's participation in MONEYVAL³ means the Island will be subject to a full review of measures against money laundering and the financing of terrorism in the next year or two; an incidental aim is to use the Bill to make amendments to the legislation mentioned above in order to further comply, or align the Island, with international standards in this area and measures against related crime.

2. Overview of the Bill

- 2.1 There are 75 Clauses and 4 Schedules. The principal purpose of the Bill is addressed in Clauses 1 to 72, and Schedules 1 and 2, which are concerned with –
 - a) bringing together the strands of legislation relating to freezing orders (in Part VII of, and Schedule 9 to, the Anti-Terrorism and Crime Act 2003), designations (in the UK Terrorist Asset-Freezing Etc., Act 2010⁴) and the power to issue directions (currently in the Terrorism (Finance) Act 2009);
 - b) as the procedures in each type of financial measure are broadly similar the Bill seeks to unite the various procedures involved in applying each type of financial measure within one piece of legislation; and
 - c) as a result, it is intended Part VII of the Anti-Terrorism and Crime Act 2003 would be removed from that Act, the Terrorism (Finance) Act 2009 will be repealed and the revocation of the Order-in-Council applying the Terrorist Asset-Freezing Etc., Act 2010 will be requested.

- 2.2 The Bill is split into 5 Parts as follows —

Part 1 is introductory (clauses 1 to 6).

Clause 3 is similar to the duration provision in the Anti-Terrorism and Crime Act 2003 (which this Bill extends) and the Act will expire unless renewed on 30th June 2019⁵. The Department is considering removing the sunset clause, and seeks views on this point. Clause 4 deals with general interpretation; Clauses 5 and 6 define "financial services" and what is meant by "resident".

Part 2 deals with the actual financial restriction orders (clauses 7 to 25)

Clauses 7 to 13 are currently part of the Terrorism (Finance) Act 2009 and relate to the power to issue directions to businesses and business persons.

Clauses 14 to 18 are currently Part VIII of the Anti-Terrorism and Crime Act 2003 and refer to freezing orders.

² The Terrorist Asset-Freezing Etc. Act 2010 (of Parliament).

³ 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.

⁴ Applied to the Island by the Terrorist Asset-Freezing etc Act 2010 (Isle of Man) Order 2011, (SI 2011/749).

⁵ This date is estimated to be 5 years after the likely commencement date of the Act if it is passed by the Branches of Tynwald, which is in line with previous "sunset clauses" in anti-terrorism legislation.

Clauses 19 to 24 are currently part of the UK Asset-Freezing Act 2010 as applied to the Island.

Clause 25 means that where the UK has made the equivalent of a freezing order or a designation this has effect in the Island and where the UK has made the equivalent of a direction the Treasury may use that fact as the basis for making a similar order to have effect in the Island. If the UK then rescinds their measure, or an appeal against it is successful, then the corresponding measure in the Island is revoked or set aside.⁶

Part 3 deals with enforcement of financial restrictions (clauses 26 to 58)

Clauses 26 to 43 are currently in the Terrorism (Finance) Act 2009 and have been transferred to this Bill with some amendment so they apply to some or all of the respective financial restriction measures.

Clauses 37 to 40 relate to civil penalties and clauses 41 to 43 concern offences also in relation to directions.

Clauses 44 and 45 deal with offences in connection with freezing orders (taken from Part VIII of the Anti-Terrorism and Crime Act 2003) and clauses 46 to 54 deal with offences in connection with designations (taken from the UK Asset-Freezing Act).

Clauses 55 to 58 deal with liability of business etc, offences committed outside the Island and the time limit for summary proceedings.

Part 4 is about the supervision of the exercise of the powers (clauses 59 to 64)

This part has provisions relating to appeals.

Part 5 is supplementary (clauses 65 to 75)

These clauses provide for the Treasury to delegate its enforcement functions to others such as the Financial Crime Unit of the Constabulary (or its successor/s in performing its functions), provision for annual reports to Tynwald, codes to prevent the financing of proliferation or terrorism, amendments to other Acts and repeals.

Clause 9 and Schedule 1 sets out the requirements in relation to directions and is based on the Terrorism (Finance) Act 2009.

Clause 14(7) and Schedule 2 sets out the requirements in relation to freezing orders and is based on Schedule 9 to the Anti-Terrorism and Crime Act 2003.

2.3 **Clause 73 and Schedule 3** amend the Anti-Terrorism and Crime Act 2003.

2.4 **Clause 74** contains amendments to the Proceeds of Crime Act 2008.

2.5 **Clause 75 and Schedule 4** are concerned with repeals. The headline repeal will be the repeal of the Terrorism (Finance) Act 2009. In the Anti-Terrorism and Crime Act 2003, Part VII and Schedule 9 deal with freezing orders and therefore will be repealed because the provisions are incorporated in this Bill. It is currently proposed Schedule 1 will be repealed and the definition of business in the regulated sector will be taken to be the same as in Schedule 4 to the Proceeds of Crime Act 2008.

⁶ This provision is very similar to a provision that has been enacted by Jersey and Guernsey. Its purpose is to ensure that certain UK measures have direct effect in the Island or the Island can make appropriate equivalent restrictive measures as the UK where the HM Treasury has acted on the basis of closed intelligence information where the Island would otherwise be unable to defend any appeal against imposing restrictive measures.

3. Specific changes to the Anti-Terrorism and Crime Act 2003

3.1 The Bill contains amendments to the 2003 Act to —

- a) remove the requirement (in section 2 of the Act) to update the list of proscribed terrorist organisations by issuing a notice in two newspapers published and circulating within the Island. This can be done through other means such as publishing lists on the Government website,
- b) address a human rights judgement in the UK concerned with the exercise of stop and search powers (in section 32 of the Act) by inserting subsections (5), (6) & (7) to section 32, a new section 32AA, substitute sections 33, 36 and insert a new section 36A together with a further Schedule numbered 8B. These comprehensively amend the powers of stop and search of persons and vehicles and provide for a code of practice to guide the police. These powers are in relation to reasonable suspicion that the person or vehicle to be searched is or may be a terrorist or contain terrorists or relevant equipment,
- c) amend the offence of facilitating terrorist funding (section 9) and insert the defence to the offence of money laundering (section 10(2)),
- d) ensure the reference to business is the same in respect of terrorism legislation as it is in respect of proceeds of crime legislation (by changing the references in sections 11 and 14 from Schedule 1 of the Act to Schedule 4 of the Proceeds of Crime Act 2008), and
- e) extend the life of the Act to 30th June 2019 (so as to be the same as the new Act).

4. Specific changes to the Proceeds of Crime Act 2008

4.1 Clause 74 amends the Proceeds of Crime Act 2008 as follows —

- a) in section 140 in connection with offences related to arrangements in relation to, or the facilitation of, or the acquisition, retention or control of criminal property,
- b) to ensure penalties for the breach of the anti-money laundering code are similar to those for breach of the equivalent terrorism code, and
- c) to change the Tynwald procedure so a code is operational once made and remains in force unless annulled by Tynwald at its next sitting, or the sitting immediately following.

5. Issue about business in the regulated sector (see 3.1(d) above)

5.1 There are some differences in the detail relating to which businesses are in the regulated sector as between Schedule 4 to the Proceeds of Crime Act 2008 and Schedule 1 to the Anti-Terrorism and Crime Act 2003.

5.2 The Department thinks it is better to have one definition for business in the regulated sector rather than two similar and yet very slightly different ones relating to proceeds of crime or terrorism matters. However, if the reader is aware of any reason why business in the regulated sector should be defined separately (and slightly differently) in the Proceeds of Crime Act and terrorism legislation the Department would be grateful if those reasons could be provided.

6. Other issues not yet in the Bill

- 6.1 Whilst this Bill has been drafted primarily to bring the 3 types of financial restriction together it is also considered appropriate to use the Bill to ensure other aspects of the Island's terrorism legislation are maintained in line with developments.
- 6.2 The Island's terrorism legislation is based on existing provision in the United Kingdom. For that reason the Department reviews developments in that jurisdiction and, where it is considered necessary, amends Island terrorism law accordingly.
- 6.3 Schedule 7 to the Anti-Terrorism and Crime Act 2003 deals with port/border controls in the Island in connection with counter-terrorism measures. These powers enable an examining officer (that is, a constable, a customs officer or an immigration officer) to stop, question, search and, if necessary, detain a person travelling through a designated port or airport. The relevant areas are Douglas and Peel harbours, Isle of Man (Ronaldsway) Airport and Jurby Aerodrome. Such an examination is for the purpose of determining whether the person is or appears to be someone who is or has been concerned with the commission, preparation or instigation of acts of terrorism. Stopping an individual does not necessarily mean that the examining officer believes the person to be a terrorist.
- 6.4 An examining officer may require a person to answer questions or provide certain documents. If a person refuses to cooperate with the examination, they can be detained by the examining officer for a maximum of nine hours. A failure to comply with requests made by the examining officer is an offence under paragraph 16.
- 6.5 Schedule 8 deals with the treatment of persons in police detention. These powers are contained within Manx legislation in order to ensure the Island can demonstrate its commitment to the international community's struggle against the threat terrorism poses to all citizens.
- 6.6 The United Kingdom Government has reviewed its equivalent legislation with a view to ensuring that the powers struck a proper balance between the need to maintain the protection of the UK Border and respect for individuals' civil liberties and a number of changes are proposed in UK law⁷. It may be appropriate to make some similar changes to the Island's legislation along the following lines —
- a) reduce the maximum legal period of examination by a constable, customs officer or an immigration officer from 9 hours to 6 hours (paragraph 4(4) of Schedule 7) and require a supervising officer to ensure the person is not detained longer than is necessary;
 - b) requiring all examinations of an individual beyond 1 hour to be subject to detention. This will afford the individual the right to access legal advice; and
 - c) to make any other amendments to this piece of legislation to ensure it continues to be similar to equivalent UK legislation (Schedule 7 to the UK Terrorism Act 2000).
- 6.7 The Department would be interested to receive any submissions to assist it in its consideration of this matter.

⁷ Anti-social Behaviour, Crime and Policing Bill [Bill 7] introduced into the UK House of Commons on 9th May 2013.

Feedback to the consultation

The draft of the Bill has been prepared for the purposes of consultation. Further refinement of the layout and content of the Bill will be undertaken in the light of the responses to the consultation.

There are four appendices to this consultation document, which may be downloaded from the Department's website at www.gov.im/dha/consultations.gov.

If you have any views or observations or there is some point of clarification you would like to receive, you are invited to respond either by writing to —

Tom Bateman,
Legislation Manager
Department of Home Affairs
"Homefield", 88 Woodbourne Road
Douglas, IM2 3AP

or by emailing dhaconsultation@gov.im

The closing date for the receipt of comments is **Wednesday 31st July 2013**.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group it would be helpful to make your position clear. To ensure that the process is open and honest responses can only be accepted if you provide your name with your response.

It may be useful when giving your feedback to make reference to the number and title of the specific provision(s) set out in the Bill, or the number of the question, that you wish to discuss.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

Impact Assessment

IMPACT ASSESSMENT OF: **Terrorism and Other Crime (Financial Restrictions) Bill 2013**

DEPARTMENT: **Home Affairs**

DATE: **18/06/2013**

VERSION NUMBER: **4**

Responsible Officer: Tom Bateman, Legislation Manager

E-mail Address: dhaconsultation@gov.im

Telephone number: 694305

SUMMARY: INTERVENTION AND OPTIONS

What is the Bill intended to do: The Bill is intended to move all provisions relating to measures to prevent the financing of terrorism into one Act. In doing so the aim is to repeal the Terrorism (Finance) Act 2009 and, ultimately, the Order-in-Council importing the Terrorism Asset-Freezing Etc. Act 2010 (of Parliament) from the statute book. The effect will be to reduce the amount of legislation in circulation and make it easier to access relevant legislation in this matter.

A subsidiary aim is to amend the Anti-Terrorism and Crime Act 2003 and the Proceeds of Crime Act 2008. The Island is subject to an inspection by MONEYVAL⁸ and some of the amendments are intended to ensure the Island's legislation relating to the financing of terrorism and crime is as up to date as possible in these key areas.

Nature of problem: Over time a number of regimes have been devised and adopted in order to restrict the ability of persons or organisations to fund terrorism. In the Island the adoption of these provisions has meant there are freezing orders within the Anti-Terrorism and Crime Act 2003, the power to issue directions is within the Terrorism (Finance) Act 2009 and the power to make designations, or to designate persons, has been applied by means of an Order-in-Council. A number of the procedures in relation to each restriction measure are similar and so it is felt it would be better to place the provisions together so there is one Act with as many similar procedures as possible.

⁸ 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.

Purpose of Proposal: To have measures to restrict the financing of terrorism in one place so they are clear and easy to locate and to take the opportunity to amend existing terrorism and related legislation, where necessary, to ensure it continues to comply fully with international standards.

Means by which it is to be achieved

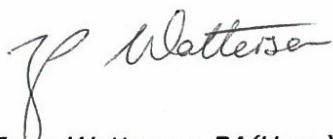
Option 1: The draft Bill is not progressed.

If this Bill is not progressed the Island will continue to have three separate but similar provisions in respect of means by which the financing of terrorism and related matters are contained in three separate pieces of legislation. It would also mean that the Island remains subject to a piece of UK legislation instead of having its own legislation and would be contrary to an undertaking made to Tynwald by the then Chief Minister in November 2010⁹.

Option 2: (preferred option) The Bill is authorised for public consultation and progressed through the Branches in its entirety.

This will fulfil a commitment to Tynwald and will also mean that, if a person or an organisation¹⁰, wishes to find out what the Island's law is in respect of provisions to combat the financing of terrorism, they will be able to find it in a single Act.

Ministerial sign off for Options stage I have read the Impact Assessment and I am satisfied that given the available information, it represents a reasonable view of the likely costs and impact of the preferred option.



Hon Juan Watterson BA(Hons), ACA, MHK

Minister for Home Affairs

18th June 2013

SUMMARY: ANALYSIS AND EVIDENCE

IMPACT OF PROPOSAL

Resource Issues - Financial (including manpower)

Statement: It is considered the Bill has no financial or resource implications because it is primarily about uniting three legislative provisions relating to the financing of terrorism and replacing them with a single Act.

Likely Financial Costs one off: None.

Average Annual (excluding one off): None.

Likely Financial Benefits one off: None.

Average Annual (excluding one off): None.

⁹ At its sitting on 16th November 2010 (lines 975 and 982f refer).

¹⁰ For example, MONEYVAL or the OECD.

If the proposal introduces provisions that will require enforcement or monitoring, who will undertake this and what is the likely annual cost?

The current enforcement provisions would be largely, if not wholly, exercised by the Treasury, Customs Officers or the Constabulary as part of their existing functions in the same way they are now (i.e. there will be no change).

Are there any costs or benefits that are not financial?

The Bill is part of a package of measures that will continue to contribute towards the Island's reputation as a co-operative and transparent jurisdiction that has the legal and practical capability to combat the financing of terrorism.

Has Treasury concurrence been given for the preferred option?:

No, as the provisions are not expected to increase the expenditure of Government or require any additional public service human resources.

Key Assumptions / Sensitivities / Risks:

The key assumptions are that it is good to have legislation dealing with the same kind of matters in one Act, that unnecessary legislation should be repealed and that, where possible, Manx legislation should be enacted rather than relying on UK legislation applied by Order-in-Council.

Approximate date for legislation to be implemented if known:

Subject to responses to the consultation exercise and Council of Ministers' authority, it is envisaged that the Bill will be introduced into the Branches in the latter part of 2013.

Link to Agenda For Change:

Good government: to reduce bureaucracy and improve transparency by placing financial provisions to combat terrorism within one Act and to rationalise or streamline relevant enforcement procedures, where possible.

Link to Department Aims and Objectives:

Ensure the delivery of the Department of Home Affairs' Bills in accordance with the Legislative Programme and compliance with the Island's international obligations.

SUMMARY: CONSULTATION

Consultation in line with Government standard consultation process: Yes.

Date: 18th June 2013

Statement: It is proposed the Bill be subject to a consultation period of six weeks. Copies of the consultation document and draft Bill are available from Tom Bateman by emailing: dhaconsultation@gov.im

APPENDIX B

Terrorism and Other Crime (Financial Restrictions) Bill 2013

The consultation draft of the Bill is included as a separate (downloadable) document.

Consultation Criteria

The Six Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

APPENDIX D

LIST OF PERSONS OR BODIES CONSULTED REGARDING THIS BILL

- Members of Tynwald
- The Attorney General
- Clerk of Tynwald
- Chief Officers of Government Departments, Offices and Statutory Boards
- Social Affairs Policy Review Committee of Tynwald
- Local Authorities
- Chamber of Commerce
- Isle of Man Employers Federation
- Isle of Man Society of Chartered Accountants
- Isle of Man Law Society
- Isle of Man Trades Council
- Positive Action Group
- Mec Vannin
- Liberal Vannin



Isle of Man
Government

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This document can be provided in a large print or audio format upon request.

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