

SANCTIONS BILL 2023

Explanatory Memorandum

1. This Bill is promoted by Dr Allinson MHK on behalf of the Treasury.
2. *Clauses 1 and 2* contain, respectively, the short title of, and the commencement provisions for, the resulting Act.
3. *Clause 3* defines the terms which apply throughout the resulting Act.
4. *Clause 4* enables the Treasury to implement UK sanctions provisions through regulations subject to the affirmative Tynwald procedure. UK sanctions provisions are provisions made in the United Kingdom in or under the Sanctions and Anti-Money Laundering Act 2018 of Parliament (“SAMLA”).
5. *Clause 5* makes provision for powers to be exercised by UK authorities in relation to ships in Manx waters. The UK authorities can stop, board and search a ship (and persons on the ship), seize goods, demand information and documents, and require the ship to be taken to a port or anchorage (and use reasonable force in exercising those functions). The powers apply if they would be available under SAMLA but the Treasury can make regulations disapplying or modifying the powers, enabling other persons to exercise the powers, or requiring the UK authorities to be accompanied by other persons. The provisions can be amended by the Treasury by regulations if the UK amends SAMLA.
6. *Clause 6* provides for the Treasury by regulations to implement UK blocking provisions (as defined in clause 3 of the Bill). Blocking provisions are intended to counter-act the extra-territorial effect of sanctions imposed by other countries that are not imposed by the UK.
7. *Clause 7* enables the Treasury to impose a monetary penalty in cases where it is satisfied that, on the balance of probabilities (that is, the civil standard of proof), a person has breached a requirement or prohibition of a UK financial sanctions provision (as defined in clause 3 of the Bill) that has effect in the Island. The permitted maximum monetary penalty is set out in the clause and can be amended by the Treasury by regulations. Monetary penalties are recoverable as civil debts and are payable into General Revenue.
8. *Clause 8* sets out the procedure the Treasury must follow when imposing, or intending to impose, a monetary penalty and provides for an appeal to a court of summary jurisdiction.
9. *Clause 9* deals with cases where financial sanctions have been breached by corporate bodies or unincorporated associations, and that breach is also attributable to an individual person. In such cases, the Treasury may also impose a penalty on the individual.

10. *Clause 10* requires the Treasury to issue guidance as to the circumstances in which a monetary penalty may be imposed and how the amount of the penalty is to be determined. It also requires the Treasury to publish periodic reports on monetary penalties that have been imposed.
11. *Clause 11* makes additional provisions about regulations which may be made under the resulting Act.
12. *Clause 12* enables a person aggrieved by a decision of the Treasury under regulations under the resulting Act to appeal to the High Court.
13. *Clause 13* provides that any processing of personal data due to the operation of the resulting Act must not contravene the provisions of the Island's data protection legislation.
14. *Clause 14* provides that persons who may have been liable to civil proceedings as a result of compliance with regulations under the resulting Act is not liable if they reasonably believe they were acting in compliance with the regulations in place at the time.
15. *Clause 15* makes provision in relation to Crown application of the resulting Act.
16. *Clause 16* deals with amendments to Manx legislation. In particular, *the Schedule* makes various amendments to the *Terrorism and Other Crime (Financial Restrictions) Act 2014*.
17. The resulting Act is not expected to have any financial or human resource implications.
18. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

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Ellan Vannin

SANCTIONS BILL 2023

1 **A BILL** to provide for the implementation in the Island of United Kingdom
 2 sanctions provisions; to amend the Terrorism and Other Crime (Financial
 3 Restrictions) Act 2014 so as to align certain provisions more closely with
 4 equivalent provisions of United Kingdom law; and for connected purposes.

BE IT ENACTED by the King’s Most Excellent Majesty, by and with the advice and
 consent of the Council and Keys in Tynwald assembled, and by the authority of the
 same, as follows:—

5 *Introductory*

6 **1 Short title**

7 The short title of this Act is the Sanctions Act 2023.

8 **2 Commencement**

- 9 (1) This Act, apart from section 1 and this section, comes into operation on
 10 such day or days as the Treasury may by order appoint.
 11 Tynwald procedure – laying only.
- 12 (2) An order under subsection (1) may make such supplemental, incidental,
 13 consequential and transitional provisions as the Treasury considers to be
 14 necessary or expedient.

15 **3 Interpretation**

- 16 (1) In this Act —
- 17 “**Guernsey**” means the Bailiwick of Guernsey;
- 18 “**Jersey**” means the Bailiwick of Jersey;
- 19 “**SAMLA**” means the Sanctions and Anti-Money Laundering Act 2018¹ of
 20 Parliament, as amended from time to time;
- 21 “**UK**” means the United Kingdom;

¹ 2018 c.13

1 “UK blocking provision” means —

- 2 (a) Council Regulation (EC) No 2271/96 of 22 November 1996
3 protecting against the effects of the extra-territorial application of
4 legislation adopted by a third country, and actions based thereon
5 or resulting therefrom², as that Regulation is given effect in the
6 UK as retained EU law under the European Union (Withdrawal)
7 Act 2018 of Parliament³;
- 8 (b) Commission Implementing Regulation (EU) 2018/1101 of 3
9 August 2018 laying down the criteria for the application of the
10 second paragraph of Article 5 of Council Regulation (EC) No
11 2271/96 protecting against the effects of the extra-territorial
12 application of legislation adopted by a third country, and actions
13 based thereon or resulting therefrom⁴, as that Regulation is given
14 effect in the UK as retained EU law under the European Union
15 (Withdrawal) Act 2018 of Parliament;
- 16 (c) the Extraterritorial US Legislation (Sanctions against Cuba, Iran
17 and Libya) (Protection of Trading Interests) Order 1996⁵ of
18 Parliament;
- 19 (d) any other UK legislation (whenever enacted) that the Treasury
20 considers to serve a purpose similar to the instruments mentioned
21 in paragraphs (a) to (c);

22 “UK financial sanctions provision” means, unless a UK sanctions provision
23 otherwise provides, a UK sanctions provision that contains a prohibition
24 or requirement imposed for a purpose mentioned in section 3(1) or (2) of
25 SAMLA;

26 “UK sanctions provision” means a provision of UK legislation made by or
27 under regulations made under Part 1 of SAMLA.

28 (2) Unless the contrary intention appears, an expression used in regulations
29 under this Act that implement a UK blocking provision or a UK
30 sanctions provision is to be read, if that expression is not used in this Act
31 but is used in the UK blocking provision or UK sanctions provision (as
32 the case may be), as having the same meaning as in that provision.

33 (3) The Treasury may by regulations amend, omit or add defined terms in
34 subsection (1) where it considers it necessary or expedient to give better
35 effect in the Island to a UK sanctions provision.

36 Tynwald procedure – affirmative.

37 (4) Regulations under subsection (3) may modify, adapt or amend any
38 provision of this Act to give effect to such a revision of defined terms.

² OJ L 309, 29.11.1996, p. 1

³ 2018 c.16

⁴ OJ L 199L, 7.8.2018, p.7

⁵ SI 1996/3171, as amended from time to time.

1 *Implementation of UK sanctions*

2 **4 Implementation of UK sanctions provisions**

3 J2019/02/3 and drafting

4 (1) The Treasury may by regulations make such provision as appears to it to
5 be necessary or expedient for the purposes of —

6 (a) giving effect in Manx law, either wholly or partly, to a UK
7 sanctions provision; or

8 (b) dealing with matters arising out of or related to such provision.

9 Tynwald procedure – affirmative.

10 (2) Without limiting subsection (1), regulations under that subsection
11 may —

12 (a) make provision by reference to (or by incorporation (by reference,
13 annexation or otherwise) of) a UK sanctions provision, or of any
14 class or description of such provisions;

15 (b) when making the provision described in paragraph (a) —

16 (i) do so to such extent and subject to such exceptions,
17 adaptations and modifications to the UK sanctions
18 provision as may be specified in the regulations;

19 (ii) make adaptations or modifications mentioned in sub-
20 paragraph (i) by providing that any one or more of the
21 Island, Jersey or Guernsey are to be treated as if they
22 formed part of the UK, for the purpose of the provision;

23 (iii) provide that a reference to the UK sanctions provision is to
24 be read as a reference to that provision as amended from
25 time to time by any other UK sanctions provision;

26 (iv) provide that a reference to the UK sanctions provision is to
27 be read as a reference to that provision as it otherwise has
28 effect in the UK from time to time by virtue of any
29 judgment of a court in the UK;

30 (c) include any provision which may be made under section 5.

31 (3) The provision that may be made by regulations under subsection (1)
32 includes an amendment of any enactment other than this Act or the
33 *Human Rights Act 2001*, but does not include provision —

34 (a) imposing a penalty of custody for more than 10 years for a
35 criminal offence;

36 (b) imposing or increasing taxation; or

37 (c) taking effect from a date earlier than that of the making of the
38 regulations containing the provision.

5 Powers in relation to ships in Manx waters under UK sanctions provisions

J2019/02/7 and drafting

- (1) Subsection (2) applies if a UK sanctions provision confers, under UK legislation, a function falling within subsection (5) (the “relevant function”) on a person specified or otherwise described in that provision (the “specified person”) in relation to a ship.
- (2) The specified person may exercise the relevant function when the ship is in the territorial sea⁶, to enforce the UK sanctions provision.
- (3) Subsection (2) applies —
 - (a) regardless of any limitation under the UK legislation as to the sea in which the ship must be present for the relevant function to be exercised; and
 - (b) regardless of whether the UK sanctions provision is given effect by regulations under section 4(1).
- (4) The Treasury may, despite subsections (1) to (3) and without limiting section 4, by regulations —
 - (a) disapply or modify the effect of subsection (2) in relation to the UK sanctions provision;
 - (b) provide that any other person or description of persons may exercise the relevant function under subsection (2), in addition to the specified person;
 - (c) require the specified person, exercising the relevant function under subsection (2), to be accompanied by any other person or description of persons.

Tynwald procedure – affirmative.
- (5) A function falls within this subsection in relation to a ship if it is a power or duty to —
 - (a) stop or board the ship;
 - (b) search the ship or anything found on the ship;
 - (c) stop or search a person on the ship;
 - (d) seize goods found on such a search;
 - (e) require a person on the ship to provide information or produce documents;
 - (f) inspect or copy such information or documents;
 - (g) require the ship to be taken to a port or anchorage (whether in the Island or elsewhere); or

⁶ “Territorial sea” is defined in the Interpretation Act 2015 as meaning the territorial sea adjacent to the Island under section 1 of the *Territorial Sea (Consequential Provisions) Act 1991*.



- 1 (h) use reasonable force in the exercise of a function falling within
2 any of the preceding paragraphs.
- 3 (6) If Part 1 of SAMLA is amended in the UK, the Treasury may by
4 regulations amend this section to make such provision as the Treasury
5 considers necessary or expedient in relation to the amendment to that
6 Act.
7 Tynwald procedure – approval required.

8 **6 Implementation of UK blocking provisions**

9 J2019/02/8 and drafting

10 The Treasury may by regulations make such provision as it considers to be
11 necessary or expedient for the purposes of –

- 12 (a) giving effect in Manx law, either wholly or partly, to a UK
13 blocking provision; or
14 (b) dealing with matters arising out of or related to a UK blocking
15 provision.

16 Tynwald procedure – affirmative.

17 *Civil penalties for breaches of financial sanctions provisions*

18 **7 Power to impose monetary penalties**

19 P2017/3/146 and drafting

- 20 (1) The Treasury may impose a monetary penalty on a person if it is
21 satisfied, on the balance of probabilities, that the person has breached a
22 prohibition, or failed to comply with an obligation, that is imposed by or
23 under a UK financial sanctions provision that has effect in the Island.
- 24 (2) In determining for the purposes of subsection (1) whether a person has
25 breached a prohibition, or failed to comply with an obligation, imposed
26 by or under a UK financial sanctions provision that has effect in the
27 Island, any requirement imposed by or under that provision for the
28 person to have known, suspected or believed any matter is to be ignored.
- 29 (3) The amount of the penalty is to be such amount as the Treasury may
30 determine but it may not exceed the permitted maximum.
- 31 (4) In a case where the breach or failure relates to particular funds or
32 economic resources and it is possible to estimate the value of the funds or
33 economic resources, the permitted maximum is the greater of –
34 (a) £1,000,000; and
35 (b) 50% of the estimated value of the funds or economic resources.
- 36 (5) In any other case, the permitted maximum is £1,000,000.
- 37 (6) In subsection (4), “funds” and “economic resources” have the same
38 meanings as they have in SAMLA.

- 1 (7) The Treasury may by regulations amend subsection (4)(a) or (5) so as to
 2 substitute another amount for the amount for the time being specified in
 3 it.
 4 Tynwald procedure – approval required.
- 5 (8) Any monetary penalty payable under this section is recoverable by the
 6 Treasury as a civil debt.
- 7 (9) Any monetary penalty received by the Treasury by virtue of this section
 8 is to be paid into General Revenue.

9 **8 Monetary penalties: procedural rights**

10 P2017/3/147(1) to (5) and drafting

- 11 (1) Before imposing a monetary penalty on a person under section 7, the
 12 Treasury must inform the person of its intention to do so.
- 13 (2) The Treasury must also –
 14 (a) explain the grounds for imposing the penalty;
 15 (b) specify the amount of the penalty;
 16 (c) explain that the person is entitled to make representations; and
 17 (d) specify the period within which any such representations must be
 18 made.
- 19 (3) If, having considered any representations, the Treasury decides to
 20 impose the penalty, the Treasury must –
 21 (a) inform the person of its decision;
 22 (b) explain that the person is entitled to appeal the decision; and
 23 (c) specify the period within which an appeal may be brought.
- 24 (4) A person may appeal against a decision of the Treasury under this
 25 section to a court of summary jurisdiction.
- 26 (5) The appeal must be brought within the period of 30 days beginning with
 27 the date on which the person was informed of the Treasury’s decision to
 28 impose the penalty.
- 29 (6) On appeal the court may –
 30 (a) uphold the decision to impose the penalty and its amount;
 31 (b) uphold the decision to impose the penalty but substitute a
 32 different amount; or
 33 (c) set aside the decision to impose the penalty.

34 **9 Monetary penalties: bodies corporate and unincorporated associations**

35 P2017/3/148 and drafting

- 36 (1) If a monetary penalty is payable under section 7 by a body, the Treasury
 37 may also impose a monetary penalty on an officer of the body if it is

- 1 satisfied, on the balance of probabilities, that the breach or failure in
 2 respect of which the monetary penalty is payable by the body —
- 3 (a) took place with the consent or connivance of the officer; or
 4 (b) was attributable to any neglect on the part of the officer.
- 5 (2) In subsection (1) —
- 6 “body” means a body corporate, a partnership or an unincorporated body other
 7 than a partnership;
- 8 “officer of a body” means —
- 9 (a) in relation to a body corporate, a director, manager, secretary or
 10 other similar officer of the body or a person purporting to act in
 11 any such capacity;
- 12 (b) in relation to a partnership, a partner or a person purporting to act
 13 as a partner;
- 14 (c) in relation to an unincorporated body other than a partnership, a
 15 person who is concerned in the management or control of the
 16 body or purports to act in the capacity of a person so concerned.
- 17 (3) Sections 7(3) to (6), (8) and (9) and 8 apply in relation to a monetary
 18 penalty that may be imposed under subsection (1) as they apply in
 19 relation to a monetary penalty that may be imposed under section 7(1).

20 **10 Monetary penalties: supplementary**

21 P2017/3/149

- 22 (1) The Treasury must issue guidance as to —
- 23 (a) the circumstances in which it may consider it appropriate to
 24 impose a monetary penalty under section 7 or 9; and
- 25 (b) how it will determine the amount of the penalty.
- 26 (2) The Treasury must, at such intervals as it considers appropriate, publish
 27 reports about the imposition of monetary penalties under section 7 or 9.
- 28 (3) The Treasury may also publish reports at such intervals as it considers
 29 appropriate in cases where —
- 30 (a) a monetary penalty has not been imposed under section 7 or 9;
 31 but
- 32 (b) the Treasury is satisfied, on the balance of probabilities, that a
 33 person has breached a prohibition, or failed to comply with an
 34 obligation, that is imposed by or under a UK financial sanctions
 35 provision that has effect in the Island.
- 36 (4) In this section “publish” means publish on a website or by such other
 37 means as the Treasury considers appropriate.

Miscellaneous

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11 Regulations: additional provisions

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(1) Regulations under this Act may contain such supplemental, incidental, consequential, transitional or saving provisions as the Treasury considers to be necessary or expedient for the purposes of the regulations.

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(2) To avoid doubt, section 87(2) of the *Interpretation Act 2015* (additional powers implied by power to make public document) applies in relation to regulations under this Act.

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(3) In particular, regulations under section 4(1) may consequentially amend or repeal a provision of a statutory document which gives effect to a provision relating to sanctions made under the *European Union and Trade Act 2019*.

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12 Right of appeal

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(1) A person aggrieved may appeal against a decision of the Treasury taken in the performance of, or in connection with, its functions under regulations under this Act.

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(2) The appeal lies to the High Court.

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(3) An appeal under subsection (1) must be made within 30 days beginning with the date on which the decision is made.

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(4) A decision which is the subject of an appeal remains in force until the disposal of the appeal, subject to subsection (5).

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(5) An appellant may apply for the decision which is the subject of an appeal to be stayed pending the appeal.

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(6) The High Court must decide the appeal, by reference to the grounds of appeal set out in the appeal notice, by applying the same principles as would be applied by a court in a dolence claim.

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(7) The High Court may –

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(a) dismiss the appeal or quash the whole or part of the decision to which it relates; and

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(b) where it quashes the whole or part of that decision, remit the matter back to the Treasury with a direction to reconsider and make a new decision in accordance with the ruling of the High Court.

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(8) Despite subsection (7), if the High Court considers that there is no purpose to be served in remitting the matter back to the Treasury, it may take the decision itself.

- 1 (9) Unless rules of court have been made under section 25 of the *High Court*
2 *Act 1991*, the court may adopt such practice and procedure as it thinks fit
3 for the purposes of an appeal under this section.

4 **13 Data protection**

- 5 (1) Nothing in this Act or in regulations under this Act authorises the
6 processing of personal data in contravention of any provisions of data
7 protection legislation.
- 8 (2) In this section “personal data” and “data protection legislation” each has
9 the meaning given in regulation 5(1) of the GDPR and LED
10 Implementing Regulations 2018⁷.

11 **14 Protection for acts done for purposes of compliance**

12 P2018/13/44 and drafting

- 13 (1) This section applies to an act done in the reasonable belief that the act is
14 in compliance with regulations under this Act.
- 15 (2) A person is not liable to any civil proceedings to which that person
16 would, in the absence of this section, have been liable in respect of the
17 act.
- 18 (3) In this section “act” includes an omission.

19 **15 Crown application**

20 P2018/13/52 and drafting

- 21 (1) Regulations under this Act may make provision binding the Crown.
- 22 (2) The regulations may not provide for the Crown to be criminally liable.
- 23 (3) Nothing in this Act affects His Majesty in His private capacity (within the
24 meaning of the Crown Proceedings Act 1947⁸ of Parliament).
- 25 (4) In this section “the Crown” has the same meaning as “the Sovereign” as
26 that expression is construed under section 32 of the *Interpretation Act*
27 *2015*.

28 *Amendments*

29 **16 Manx legislation amended**

- 30 (1) The *Terrorism and Other Crime (Financial Restrictions) Act 2014* is amended
31 in accordance with the Schedule.
- 32 (2) In section 184(1) of the *Customs and Excise Management Act 1986*, for
33 paragraph (b) of the definition of “assigned matter” substitute —

⁷ SD 2018/0145

⁸ 1947 c.44

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- “(b) any other matter in relation to which the Treasury is for the time being required to perform any duties or empowered to perform any functions under or in relation to —
- (i) the *Sanctions Act 2023*; or
 - (ii) an order under section 1 or 2 of the *Customs and Excise Act 1993*”.

SCHEDULE

[Section 16]

AMENDMENTS TO THE TERRORISM AND OTHER CRIME (FINANCIAL RESTRICTIONS) ACT 2014

1 Amendment of section 3

(1) In subsection (1) —

(a) in the definition of “business in the regulated sector” for “paragraph 1” substitute “paragraph 2”;

(b) in the definition of “designated person” —

(i) in paragraph (a) omit the words in parentheses after “Part 2”;

(ii) omit paragraph (b); and

(iii) after paragraph (c)(ii) insert —

“(iii) the Security Council or the Committee established pursuant to resolution 1718 (2006) relating to the Democratic People’s Republic of Korea; or

(iv) the Security Council or the Committee established pursuant to resolution 1737 (2006) relating to Iran, as it continues to have effect by virtue of paragraph 6(c) of Annex B of resolution 2231 (2015),”;

(c) in the definition of “designation” omit “or section 19”;

(d) omit the definition of “final designation”;

(e) in the definition of “financial services” for “section (2)” substitute “section 4”;

(f) in the definition of “funds”, in paragraph (b) omit “with relevant institutions or other persons”;

(g) omit the definition of “interim designation”;

(h) after the definition of “radiological weapon” insert —

“**“relevant firm”** means —

(a) a business in the regulated sector;

(b) a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging —

(i) articles made from gold, silver, platinum or palladium; or

(ii) precious stones or pearls;”;

(i) for the definition of “relevant institution” substitute —

“**“relevant institution”** means —

- 1 (a) a person who is licensed under the *Financial Services Act*
 2 *2008* to carry on a regulated activity within the meaning of
 3 section 3 of that Act;
- 4 (b) a person who is authorised or registered under the
 5 *Insurance Act 2008* or holds a permit under that Act;
- 6 (c) a person who is registered under the *Moneylenders Act 1991*
 7 to carry on the business of lending money;
- 8 (d) a person who is acting as a trustee or an administrator of a
 9 retirement benefits scheme within the meaning of the
 10 *Retirement Benefits Schemes Act 2000*;

11 (j) in the definition of “relevant supervisory authority” for
 12 “paragraph 2” substitute “paragraph 3”.

13 (2) For subsection (2) substitute —

14 “(2) The Council of Ministers may by order amend the following
 15 definitions in subsection (1) —

- 16 (a) the definition of “designated person” to reflect changes to
 17 United Nations sanctions measures;
- 18 (b) the definition of “relevant firm” or “relevant institution” to
 19 give better effect in the Island to a provision of this Act.

20 Tynwald procedure – affirmative.”.

21 (3) Omit subsection (3).

22 2 Substitution of section 5A

23 For section 5A substitute —

24 “5A Meaning of “owned or controlled directly or indirectly”: persons

25 (1) In this Act, a person who is not an individual (“C”) is “owned or
 26 controlled directly or indirectly” by another person (“P”) if either
 27 of the following two conditions is met (or both are met).

28 (2) The first condition is that P —

- 29 (a) holds directly or indirectly more than 50% of the shares in
 30 C;
- 31 (b) holds directly or indirectly more than 50% of the voting
 32 rights in C; or
- 33 (c) holds the right directly or indirectly to appoint or remove a
 34 majority of the board of directors of C.

35 (3) Schedule A1 contains provision applying for the purpose of
 36 interpreting subsection (2).

37 (4) The second condition is that it is reasonable, having regard to all
 38 the circumstances, to expect that P would (if P chose to) be able, in

1 | most cases or in significant respects, by whatever means and
 2 | whether directly or indirectly, to achieve the result that the affairs
 3 | of C are conducted in accordance with P’s wishes.”.

4 | **3 Insertion of new section 5B**

5 | After section 5A insert —

6 | **“5B Meaning of “owned, held or controlled”: funds or economic 7 | resources**

8 | In this Act, a reference to funds or economic resources that are “owned,
 9 | held or controlled” by a person includes, in particular, a reference to —

- 10 | (a) funds or economic resources in which the person has any
 11 | legal or equitable interest, regardless of —
- 12 | (i) whether the interest is held jointly with any other
 13 | person;
- 14 | (ii) whether any other person holds an interest in the
 15 | funds or economic resources;
- 16 | (b) any tangible property (other than real property) or bearer
 17 | security that is comprised in funds or economic resources
 18 | and which is in the possession of the person.”.

19 | **4 Amendment of section 6**

20 | After subsection (4) insert —

- 21 | “(5) The fact that a direction has been given in the United Kingdom
 22 | under Schedule 7 to the Counter-Terrorism Act 2008 (of
 23 | Parliament)⁹ is to be taken as sufficient for the Treasury to form
 24 | the same reasonable belief that gave rise to that direction.”.

25 | **5 Amendment of section 9**

26 | (1) At the end of subsection (3) insert on a new line —

27 | “Tynwald procedure – affirmative.”.

28 | (2) Omit subsection (4).

29 | **6 Amendment of section 10**

30 | For the text of section 10 substitute —

31 | “A direction given to —

- 32 | (a) a description of persons acting in the course of a business
 33 | in the regulated sector; or

⁹ 2008 c.28

(b) all persons acting in the course of a business in the regulated sector,

must be contained in an order made by the Treasury.

Tynwald procedure (if the order contains requirements of a kind mentioned in paragraph 6 of Schedule 1) – affirmative.

Tynwald procedure (if the order does not contain any such requirements) – laying only.”.

7 Amendment of section 12

For subsection (3) substitute —

“(3) The Treasury may by order —

(a) revoke an order made under section 10; or

(b) vary such an order so as to make its provisions less onerous.

Tynwald procedure – laying only.”.

8 Amendment of section 13

Omit subsection (6).

9 Amendment of section 14

After subsection (4) insert —

“(5) The fact that a freezing order has been made in the United Kingdom under Part 2 of the Anti-terrorism, Crime and Security Act 2001 (of Parliament)¹⁰ is to be taken as sufficient for the Treasury to form the same reasonable belief that gave rise to that order.”.

10 Amendment of section 17

For the text of section 17 substitute —

“A power to make a freezing order is exercisable by order made by the Treasury.

Tynwald procedure – negative.”.

11 Amendment of section 18

(1) In the heading omit “final”.

(2) For subsections (1) and (2) substitute —

“(1) The Treasury may make a designation of a named person if —

¹⁰ 2001 c.24

- 1 (a) it reasonably believes that the person —
- 2 (i) is or has been involved in terrorist activity;
- 3 (ii) is owned or controlled directly or indirectly by a
- 4 person to whom sub-paragraph (i) applies;
- 5 (iii) is acting on behalf of or at the direction of a person
- 6 to whom sub-paragraph (i) applies; or
- 7 (iv) is a member of, or associated with, a person to
- 8 whom sub-paragraph (i) applies; and
- 9 (b) it considers that it is necessary for —
- 10 (i) compliance with the relevant UN obligations;
- 11 (ii) the prevention of terrorism in the Island or
- 12 elsewhere otherwise than by compliance with the
- 13 relevant UN obligations; or
- 14 (iii) the interests of national security.
- 15 (2) For this purpose involvement in terrorist activity includes being
- 16 so involved in whatever way and wherever any actions
- 17 constituting the involvement take place, and in particular
- 18 includes —
- 19 (a) being responsible for, engaging in, or providing support
- 20 for, the commission, preparation or instigation of acts of
- 21 terrorism;
- 22 (b) providing financial services, or making available funds or
- 23 economic resources, for the purposes of terrorism;
- 24 (c) facilitating, promoting or encouraging terrorism;
- 25 (d) providing or receiving training for the purposes of
- 26 terrorism;
- 27 (e) travelling or attempting to travel from or into the relevant
- 28 territory for the purposes of terrorism;
- 29 (f) carrying out recruitment activities for a person who is
- 30 involved in terrorism;
- 31 (g) being involved in the sale, supply or transfer of arms or
- 32 material related to arms to a person who is involved in
- 33 terrorism;
- 34 (h) engaging in trade of whatever description with a person
- 35 who is involved in terrorism;
- 36 (i) being responsible for, engaging in, being complicit in,
- 37 providing support for, or promoting, the abduction,
- 38 enslavement, forced marriage or rape of, or sexual violence
- 39 against, persons outside the relevant territory on behalf of,
- 40 or in the name of, a person who is involved in terrorism;

- 1 (j) supporting or assisting any person who is known or
 2 believed by the person concerned to be involved in any
 3 activity as mentioned in paragraphs (a) to (i); or
 4 (k) being involved in assisting the contravention or
 5 circumvention of any relevant provision.
- 6 (2A) In this section “recruitment activities” means —
 7 (a) soliciting another person to —
 8 (i) become a member of a person, other than an
 9 individual, involved in terrorism; or
 10 (ii) participate in any act by, in conjunction with, in the
 11 name of, on behalf of or in support of a person
 12 involved in terrorism;
 13 (b) soliciting or otherwise procuring funds for the purpose of
 14 financing the travel of a person solicited as mentioned in
 15 paragraph (a);
 16 (c) organising, providing support for or otherwise facilitating
 17 the travel of a person solicited as mentioned in paragraph
 18 (a).
- 19 (2B) In this section —
 20 being “associated with” a person includes pledging allegiance in
 21 whatever way to that person;
 22 “promoting or encouraging” terrorism includes a reference to a person
 23 who promotes or encourages terrorism within the meaning of
 24 section 3 of the Terrorism Act 2000 (of Parliament)¹¹;
 25 “relevant provision” means —
 26 (a) any provision of sections 44 to 49;
 27 (b) any provision of the law of a country other than the Island
 28 made for purposes corresponding to a purpose of a
 29 provision of sections 44 to 49;
- 30 “relevant territory” means —
 31 (a) the British Islands; and
 32 (b) the territory of the member States of the European Union.
- 33 (2C) Nothing in any paragraph of subsection (2) is to be taken to limit
 34 the meaning of any of the other paragraphs of that subsection.”
- 35 (3) For subsection (4) substitute —
 36 “(4) In subsection (1)(b) “relevant UN obligations” means the
 37 obligations the Island has by virtue of paragraphs 1 and 2 of the

¹¹ 2000 c.11



- 1 United Nations Security Council Resolution 1373 (2001), adopted
2 by the Security Council on 28 September 2001.
- 3 (5) The Treasury may by order amend the definition of “relevant UN
4 obligations” in subsection (4) so as to add further relevant
5 Security Council resolutions or remove any that are superseded.
6 Tynwald procedure – negative.”.
- 7 **12 Repeal of section 19**
- 8 Omit section 19.
- 9 **13 Repeal of sections 21 and 22**
- 10 Omit sections 21 and 22.
- 11 **14 Repeal of Division 3 of Part 2**
- 12 Omit section 24 and the Division heading immediately preceding it.
- 13 **15 Amendment of section 25**
- 14 (1) After subsection (2) insert —
- 15 “(2A) For the purposes of subsection (2), expenditure for the benefit of a
16 financially restricted person includes expenditure on the
17 discharge (or partial discharge) of a financial obligation for which
18 the financially restricted person is wholly or partly responsible.”.
- 19 (2) Omit subsection (6).
- 20 **16 Amendment of section 27**
- 21 In subsection (3), for “£5,000” substitute “level 5 on the standard scale”.
- 22 **17 Amendment of section 28**
- 23 In subsection (1) for “financially restricted person” (wherever occurring)
24 substitute “directed person”.
- 25 **18 Amendment of section 29**
- 26 (1) In subsection (1) for “the first, second or third set of conditions is
27 satisfied” substitute “condition A and any one or more of conditions B, C
28 or D are satisfied”.
- 29 (2) After subsection (1) insert —
- 30 “(1A) Condition A is that the person is a directed person.”.
- 31 (3) In subsection (2) for “The first set of conditions” substitute “Condition
32 B”.

- 1 (4) In subsection (3) for “The second set of conditions” substitute “Condition
2 C”.
- 3 (5) In subsection (4) for “The third set of conditions” substitute “Condition
4 D”.
- 5 (6) In subsection (5)(a) for “financially restricted person” substitute
6 “directed person”.

7 **19 Amendment of section 30**

- 8 (1) In the heading for “relevant institutions” substitute “relevant firms”.
- 9 (2) In the section —
- 10 (a) for “relevant institution” (wherever occurring) substitute
11 “relevant firm”; and
- 12 (b) for “institution” (wherever occurring) substitute “firm”.
- 13 (3) In subsection (5), for “£5,000” substitute “level 5 on the standard scale”.

14 **20 Amendment of section 31**

15 For the text of section 31 substitute —

- 16 “(1) The Treasury may disclose in accordance with this section any
17 information or evidence obtained by it in exercise of its powers
18 under this Act (including any document so obtained and any copy
19 or extract made of any document so obtained).
- 20 (2) Information or evidence referred to in subsection (1) may be
21 disclosed for, or in connection with, any of the following
22 purposes —
- 23 (a) the exercise of functions under this Act;
- 24 (b) facilitating, monitoring or ensuring compliance with this
25 Act;
- 26 (c) taking any action with a view to instituting, or otherwise
27 for the purposes of, any proceedings in the Island for an
28 offence under this Act;
- 29 (d) taking any action with a view to instituting, or otherwise
30 for the purposes of, any proceedings in any of the United
31 Kingdom, the Channel Islands or any British overseas
32 territory, for an offence under a provision in any such
33 jurisdiction that is similar to a provision of this Act;
- 34 (e) compliance with an international obligation;
- 35 (f) facilitating the exercise by an authority outside the Island
36 or by an international organisation of functions which
37 correspond to functions under this Act.

- 1 (3) Information or evidence referred to in subsection (1) may be
2 disclosed to the following persons —
- 3 (a) a constable;
- 4 (b) any person holding or acting in any office under or in the
5 service of—
- 6 (i) the Government of the Island;
- 7 (ii) the Crown in right of the Government of the United
8 Kingdom;
- 9 (iii) the Crown in right of the Scottish Government, the
10 Northern Ireland Executive or the Welsh
11 Government;
- 12 (iv) the States of Jersey, Guernsey or Alderney or the
13 Chief Pleas of Sark; or
- 14 (v) the Government of any British overseas territory;
- 15 (c) any law officer of the Crown in any of the British Islands;
- 16 (d) the Legal Aid Agency in England and Wales, the Scottish
17 Legal Aid Board and the Legal Services Agency Northern
18 Ireland;
- 19 (e) the Isle of Man Financial Services Authority and any body
20 of any other part of the British Islands exercising an
21 equivalent function;
- 22 (f) any other regulatory body (whether or not in the Island);
- 23 (g) any organ of the United Nations;
- 24 (h) the Council of the European Union, the European
25 Commission or the European External Action Service;
- 26 (i) the Government of any country;
- 27 (j) any other person where the Treasury considers that it is
28 appropriate to disclose the information or evidence.
- 29 (4) Information or evidence referred to in subsection (1) may be
30 disclosed to any person with the consent of a person who, in their
31 own right, is entitled to the information.
- 32 (5) In paragraph (4) “in their own right” means not merely in the
33 capacity as a servant or agent of another person.
- 34 (6) In this section “international obligation” means an obligation of
35 the United Kingdom and the Island created by or arising under
36 any international agreement.”

37 **21 Repeal of section 32**

38 Omit section 32.

1 **22 Amendment of section 33**

2 In subsection (6)(b), for “£5,000” substitute “level 5 on the standard scale”.

3 **23 Amendment of section 35**

4 (1) In subsection (2)(a) for “Data Protection Act 2002” substitute “data
5 protection legislation”.

6 (2) In subsection (6), before the entry relating to “information” insert the
7 following entry —

8 | ““data protection legislation” has the meaning given in regulation 5(1) of
9 | the GDPR and LED Implementing Regulations 2018¹²”.

10 **24 Amendment of section 36**

11 For subsection (7) substitute —

12 | “(7) Any penalty under this section received by the Treasury is to be
13 | paid into General Revenue.”.

14 **25 Amendment of section 38**

15 After subsection (1) insert —

16 | “(1A) The appeal must be brought within the period of 30 days
17 | beginning with the date of the notice issued under section 37(3).”.

18 **26 Amendment of section 39**

19 (1) In subsection (4)(a) for “2 years” substitute “7 years”.

20 (2) In subsection (4)(b) for “to a fine not exceeding £5,000” substitute “to
21 custody for not more than 12 months or to a fine or to both”.

22 **27 Amendment of section 40**

23 (1) In subsection (2)(a) for “2 years” substitute “7 years”.

24 (2) In subsection (2)(b) for “to a fine not exceeding £5,000” substitute “to
25 custody for not more than 12 months or to a fine or to both”.

26 **28 Amendment of section 41**

27 In subsection (2)(b) for “to a fine not exceeding £5,000” substitute “to custody
28 for not more than 12 months or to a fine or to both”.

29 **29 Amendment of section 42**

30 (1) In subsection (2)(a) for “2 years” substitute “7 years”.

¹² SD 2018/0145

- 1 (2) In subsection (2)(b) for “to a fine not exceeding £5,000” substitute “to
2 custody for not more than 12 months or to a fine or to both”.

3 **30 Amendment of section 44**

4 After subsection (4) insert —

- 5 “(5) For the purposes of subsection (1) funds or economic resources
6 are to be treated as owned, held or controlled by a designated
7 person if they are owned, held or controlled by a person who is
8 owned or controlled directly or indirectly (within the meaning of
9 section 5A) by the designated person.”

10 **31 Amendment of section 45**

11 After subsection (3) insert —

- 12 “(4) The reference in subsection (1) to making funds or financial
13 services available indirectly to a designated person includes, in
14 particular, a reference to making them available to a person who
15 is owned or controlled directly or indirectly (within the meaning
16 of section 5A) by the designated person.”

17 **32 Amendment of section 47**

18 After subsection (3) insert —

- 19 “(4) The reference in subsection (1) to making economic resources
20 available indirectly to a designated person includes, in particular,
21 a reference to making them available to a person who is owned or
22 controlled directly or indirectly (within the meaning of section
23 5A) by the designated person.”

24 **33 Amendment of section 50**

25 For the text of section 50 substitute —

- 26 “(1) The prohibition in section 44 is not contravened by an
27 independent person (“P”) transferring to another person a legal or
28 equitable interest in funds or economic resources where,
29 immediately before the transfer, the interest —
30 (a) is held by P; and
31 (b) is not held jointly with the designated person.
- 32 (2) In subsection (1) “independent person” means a person who —
33 (a) is not the designated person; and
34 (b) is not owned or controlled directly or indirectly (within the
35 meaning of section 5A) by the designated person.

- 1 (3) The prohibitions in sections 44 to 46 are not contravened by a
 2 relevant institution crediting a frozen account with interest or
 3 other earnings due on the account.
- 4 (4) The prohibitions in sections 45 and 46 are not contravened by a
 5 relevant institution crediting a frozen account where it receives
 6 funds transferred to that institution for crediting to that account.
- 7 (5) The prohibitions in sections 45 and 46 are not contravened by the
 8 transfer of funds to a relevant institution for crediting to an
 9 account held or controlled (directly or indirectly) by a designated
 10 person, where those funds are transferred in discharge (or partial
 11 discharge) of an obligation which arose before the date on which
 12 the person became a designated person.
- 13 (6) The prohibition in section 46 is not contravened by the making of
 14 a payment which —
- 15 (a) is a benefit under or by virtue of an enactment relating to
 16 social security (irrespective of the name or nature of the
 17 benefit); and
- 18 (b) is made to a person who is not a designated person,
 19 whether or not the payment is made in respect of a designated
 20 person.
- 21 (7) In this section “frozen account” means an account with a relevant
 22 institution which is held or controlled (directly or indirectly) by a
 23 designated person.”

24 **34 Amendment of section 51**

25 Omit subsection (2).

26 **35 Amendment of section 52**

27 For the text of section 52 substitute —

- 28 | “A person guilty of an offence under this subdivision is liable —
- 29 | (a) on conviction on information, to custody for a term not
 30 | exceeding 7 years or to a fine or to both;
- 31 | (b) on summary conviction, to custody for a term not
 32 | exceeding 12 months or to a fine not exceeding level 5 on
 33 | the standard scale or to both.”

34 **36 Insertion of new section 52A**

35 After section 52 insert —

“52A Protection for acts done for purposes of compliance

- (1) This section applies to an act done in the reasonable belief that the act does not contravene a prohibition in section 44(1), 45(1), 46(1), 47(1) or 48(1).
- (2) A person is not liable to any civil proceedings to which that person would, in the absence of this section, have been liable in respect of the act.
- (3) In this section “act” includes an omission.”.

37 Amendment of section 55

For the text of section 55 substitute —

- “(1) An offence under this Part may be committed by conduct wholly or partly outside the Island.
- (2) In such a case —
 - (a) the conduct constitutes the offence;
 - (b) proceedings for the offence may be taken in the Island; and
 - (c) the offence may for all incidental purposes be treated as having been committed in the Island.”.

38 Amendment of section 57

- (1) Omit subsection (1)(a).
- (2) In subsection (3) —
 - (a) for “direction” substitute “financial restriction order”; and
 - (b) for “effected by the United Kingdom Treasury” substitute “effected in the United Kingdom”.
- (3) In subsection (4) —
 - (a) for “order” substitute “financial restriction order”; and
 - (b) for “direction” substitute “order”.
- (4) In subsection (8) for “direction or order” substitute “financial restriction order”.
- (5) Omit subsections (10) and (11).

39 Amendment of section 58

In subsection (1) for “this Part” substitute “this Act”.

40 Amendment of section 63

For the text of section 63 substitute —

1 “The Treasury may, by order, delegate any of its functions under this
 2 Act, other than any power to make orders, to any organisation in the
 3 Island responsible for the prevention of, or investigation into, financial
 4 crime and the financing of terrorism.
 5 Tynwald procedure – negative.”

6 **41 Amendment of section 68**

- 7 (1) At the end of subsection (1) insert on a new line –
 8 | “Tynwald procedure – negative.”
- 9 (2) In subsection (2)(d)(ii) for “£5,000” substitute “level 5 on the standard
 10 scale”.
- 11 (3) In subsection (5) omit the words after “statutory document”.

12 **42 Repeal of section 69**

13 Omit section 69.

14 **43 Amendment of section 69A**

- 15 (1) At the end of subsection (1) insert on a new line –
 16 | “Tynwald procedure – affirmative.”
- 17 (2) Omit subsections (5) and (6).

18 **44 Insertion of Schedule A1**

19 Before Schedule 1 insert the following Schedule –

20 | “SCHEDULE A1

21 | [Section 5A(3)]

22 | **RULES FOR INTERPRETATION OF SECTION 5A(2)**

23 | **1 Application of Schedule**

- 24 | (1) The rules set out in the following paragraphs of this Schedule
 25 | apply for the purpose of interpreting section 5A(2).
 26 | (2) They also apply for the purpose of interpreting this Schedule.

27 | **2 Joint interests**

28 | If two or more persons each hold a share or right jointly, each of them is
 29 | treated as holding that share or right.

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3 Joint arrangements

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(1) If shares or rights held by a person and shares or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them.

(2) A “joint arrangement” is an arrangement between the holders of shares or rights that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre-determined by the arrangement.

(3) “Arrangement” has the meaning given by paragraph 10.

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4 Calculating shareholdings

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(1) In relation to a person who has a share capital, a reference to holding “more than 50% of the shares” in that person is to holding shares comprised in the issued share capital of that person of a nominal value exceeding (in aggregate) 50% of that share capital.

(2) In relation to a person who does not have a share capital —

(a) a reference to holding shares in that person is to holding a right or rights to share in the capital or, as the case may be, profits of that person;

(b) a reference to holding “more than 50% of the shares” in that person is to holding a right or rights to share in more than 50% of the capital or, as the case may be, profits of that person.

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5 Voting rights

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(1) A reference to the voting rights in a person is to the rights conferred on shareholders in respect of their shares (or, in the case of a person not having a share capital, on members) to vote at general meetings of the person on all or substantially all matters.

(2) In relation to a person that does not have general meetings at which matters are decided by the exercise of voting rights —

(a) a reference to holding voting rights in the person is to be read as a reference to holding rights in relation to the person that are equivalent to those of a person entitled to exercise voting rights in a company;

(b) a reference to holding “more than 50% of the voting rights” in the person is to be read as a reference to holding the right under the constitution of the person to block changes to the overall policy of the person or to the terms of its constitution.

- (3) In applying section 5A(2) and this Schedule, the voting rights in a person are to be reduced by any rights held by the person itself.

6 Rights to appoint or remove members of the board

- (1) A reference to the right to appoint or remove a majority of the board of directors of a person is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.
- (2) A reference to a board of directors, in the case of a person who does not have such a board, is to be read as a reference to the equivalent management body of that person.

7 Shares or rights held “indirectly”

- (1) A person holds a share “indirectly” if the person has a majority stake in another person and that other person —
- (a) holds the share in question; or
 - (b) is part of a chain of persons —
 - (i) each of whom (other than the last) has a majority stake in the person immediately below it in the chain; and
 - (ii) the last of whom holds the share.
- (2) A person holds a right “indirectly” if the person has a majority stake in another person and that other person —
- (a) holds that right; or
 - (b) is part of a chain of persons —
 - (i) each of whom (other than the last) has a majority stake in the person immediately below it in the chain; and
 - (ii) the last of whom holds that right.
- (3) For these purposes, a person (“A”) has a “majority stake” in another person (“B”) if —
- (a) A holds a majority of the voting rights in B;
 - (b) A is a member of B and has the right to appoint or remove a majority of the board of directors of B;
 - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B; or
 - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.

- 1 | (4) In the application of this paragraph to the right to appoint or
2 | remove a majority of the board of directors, a person (“A”) is to be
3 | treated as having the right to appoint a director if —
4 | (a) any person’s appointment as director follows necessarily
5 | from that person’s appointment as director of A; or
6 | (b) the directorship is held by A itself.

7 | **8 Shares held by nominees**

8 | A share held by a person as nominee for another is to be treated as held
9 | by the other (and not by the nominee).

10 | **9 Rights treated as held by person who controls their exercise**

- 11 | (1) Where a person controls a right, the right is to be treated as held
12 | by that person (and not by the person who in fact holds the right,
13 | unless that person also controls it).
14 | (2) A person “controls” a right if, by virtue of any arrangement
15 | between that person and others, the right is exercisable only —
16 | (a) by that person;
17 | (b) in accordance with that person’s directions or instructions;
18 | or
19 | (c) with that person’s consent or concurrence.

20 | **10 Meaning of “arrangement”**

21 | “Arrangement” includes —
22 | (a) any scheme, agreement or understanding, whether or not it
23 | is legally enforceable; and
24 | (b) any convention, custom or practice of any kind.

25 | **11 Rights exercisable only in certain circumstances etc.**

- 26 | (1) Rights that are exercisable only in certain circumstances are to be
27 | taken into account only —
28 | (a) when the circumstances have arisen, and for so long as
29 | they continue to obtain; or
30 | (b) when the circumstances are within the control of the
31 | person having the rights.
32 | (2) Rights that are normally exercisable but are temporarily incapable
33 | of exercise are to continue to be taken into account.

12 Rights attached to shares held by way of security

Rights attached to shares held by way of security provided by a person are to be treated for the purposes of this Schedule as held by that person —

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person's instructions; and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests.”

IN THE KEYS

SANCTIONS BILL 2023

A **BILL** to provide for the implementation in the Island of United Kingdom sanctions provisions; to amend the Terrorism and Other Crime (Financial Restrictions) Act 2014 so as to align certain provisions more closely with equivalent provisions of United Kingdom law; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

DR ALLINSON MHK

MAY 2023