



**Isle of Man**

*Ellan Vannin*

**AT 8 of 2009**

**TERRORISM (FINANCE) ACT 2009**





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## TERRORISM (FINANCE) ACT 2009

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## **TERRORISM (FINANCE) ACT 2009**

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<i>Announced to Tynwald:</i>	<i>15 July 2009</i>
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**AN ACT** to confer new and further powers to act against terrorist financing, money laundering and certain other activities; and for connected purposes.

### **PART 1 – INTRODUCTORY**

#### **1 Short title**

The short title of this Act is the Terrorism (Finance) Act 2009.

#### **2 Duration**

[2003/6/82]

- (1) This Act shall remain in operation until 30 June 2014 and shall then expire unless continued in operation by an order under subsection (2).
- (2) The Council of Ministers may by order provide —
  - (a) that all or any of those provisions which are for the time being in operation (including any in operation under an order under this paragraph or paragraph (c)) shall continue in operation for a period not exceeding 5 years from the coming into operation of the order;
  - (b) that all or any of those provisions which are for the time being in operation shall cease to be in operation;
  - (c) that all or any of those provisions which are not for the time being in operation shall come into operation again and remain in operation for a period not exceeding 5 years from the coming into operation of the order; or
  - (d) for such miscellaneous, transitional or saving provisions as the Council of Ministers may consider necessary in connection with the exercise of any power in paragraphs (a) to (c).

- (3) An order under subsection (2) shall not come into operation unless it is approved by Tynwald.

### 3 Interpretation

[P2008/28/73 & Sch 7 paras 2 & 45]

In this Act unless the context otherwise requires —

“**appropriate body**” means a body that regulates or is representative of any trade, profession, business or employment carried on by the person to be dealt with under section 10 or section 13 as the case may be;

“**biological weapon**” means anything within section 1(1)(a) or (b) of the Biological Weapons Act 1974 (of Parliament), as that Act has effect in the Island;

“**business in the regulated sector**” has the same meaning as in paragraph 1 of Schedule 4 to the *Proceeds of Crime Act 2008*;

“**chemical weapon**” means a chemical weapon as defined by section 1(1) of the Chemical Weapons Act 1996 (of Parliament), as that Act has effect in the Island, other than one the intended use of which is only for permitted purposes (as defined by section 1(3) of that Act);

“**conduct**” includes acts and omissions;

“**country**” includes territory;

“**direction**” means a direction given under section 4;

“**document**” means information recorded in any form;

“**enforcement authority**” means the Financial Crime Unit of the Isle of Man Constabulary;

“**enforcement officer**” means a constable or customs officer serving with the enforcement authority;

“**financial restrictions proceedings**” means proceedings in the High Court on an application under section 23 or on a claim arising from any matter to which such an application relates;

“**interim direction**” means a direction given under section 4A;<sup>1</sup>

“**money laundering**” means an act which falls within section 158(11) of the *Proceeds of Crime Act 2008*;

“**notice**” means a notice in writing;

“**nuclear weapon**” includes a nuclear explosive device that is not intended for use as a weapon;

“**radiological weapon**” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material;

“**relevant person**”, in relation to a direction, means any of the persons to whom the direction is given;

“**relevant supervisory authority**” shall be construed in accordance with section 20(2);

“**rules of court**” means rules for regulating the practice and procedure to be followed in the High Court;

“**special advocate**” means a person appointed under section 27;

“**terrorism**” has the same meaning as in section 1 of the *Anti-Terrorism and Crime Act 2003*;

“**terrorist financing**” means —

- (a) the use of funds, or the making available of funds, for the purposes of terrorism; or
- (b) the acquisition, possession, concealment, conversion or transfer of funds that are (directly or indirectly) to be used or made available for those purposes.

## PART 2 – TERRORIST FINANCING AND MONEY LAUNDERING

### *Directions*

#### 4 **Conditions for giving direction by Treasury**

[P2008/28/Sch 7 para 1]

- (1) The Treasury may give a direction to a person mentioned in paragraph 1 of the Schedule if one or more of the following conditions is met in relation to a country.
- (2) The first condition is that the Financial Action Task Force has advised that measures should be taken in relation to the country because of the risk of terrorist financing or money laundering activities being carried on —
  - (a) in the country;
  - (b) by the government of the country; or
  - (c) by persons resident or incorporated in the country.
- (3) The second condition is that the Treasury reasonably believes that there is a risk that terrorist financing or money laundering activities are being carried on —
  - (a) in the country;
  - (b) by the government of the country; or
  - (c) by persons resident or incorporated in the country,

and that this poses a significant risk to the national interests of the Island.

- (4) The third condition is that the Treasury reasonably believes that —
  - (a) the development or production of nuclear, radiological, biological or chemical weapons in the country; or
  - (b) the doing in the country of anything that facilitates the development or production of any such weapons,poses a significant risk to the national interests of the Island.
- (5) The Schedule has effect in relation to directions.

#### **4A Conditions for giving interim direction by Treasury**

- (1) The Treasury may give an interim direction to a person mentioned in paragraph 1 of the Schedule if either of the following conditions is met in relation to a country.
- (2) The first condition is that the Treasury reasonably suspects that there is a risk that terrorist financing or money laundering activities are being carried on —
  - (a) in the country;
  - (b) by the government of the country; or
  - (c) by persons resident or incorporated in the country,and that this poses a significant risk to the national interests of the Island.
- (3) The second condition is that the Treasury reasonably suspects that —
  - (a) the development or production of nuclear, radiological, biological or chemical weapons in the country; or
  - (b) the doing in the country of anything that facilitates the development or production of any such weapons,poses a significant risk to the national interests of the Island.
- (4) The Treasury may not give more than one interim direction to the same person in relation to the same, or substantially the same, evidence.
- (5) The Schedule has effect in relation to interim directions as it has effect in relation to directions save that in paragraph 9(3) the reference to ‘one year’ is to be read as referring to ‘30 days’.<sup>2</sup>

#### *Enforcement: information powers*

### **5 Power to require information or documents**

[P2008/28/ Sch7 para 19]

- (1) An enforcement officer may by notice to a relevant person require the person —
  - (a) to provide such information as may be specified in the notice; or

- (b) to produce such documents as may be so specified.
- (2) An enforcement officer may exercise powers under this section only if the information or documents sought to be obtained as a result are reasonably required in connection with the exercise by the enforcement authority of its functions under this Part.
- (3) If an enforcement officer requires information to be provided or documents produced under this section –
  - (a) the notice must set out the reasons why the officer requires the information to be provided or the documents produced; and
  - (b) the information must be provided or the documents produced –
    - (i) before the end of such reasonable period as may be specified in the notice; and
    - (ii) at such place as may be so specified.
- (4) In relation to a document in electronic form the power to require production of it includes a power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.
- (5) An enforcement officer may take copies of, or make extracts from, any document produced under this section.
- (6) The production of a document does not affect any lien which a person has on the document.

## **6 Entry, inspection etc without a warrant**

[P2008/28/ Sch7 para 20]

- (1) If an enforcement officer has reasonable cause to believe that any premises are being used by a relevant person in connection with the person's business activities, the officer may on producing evidence of authority at any reasonable time –
  - (a) enter the premises;
  - (b) inspect the premises;
  - (c) observe the carrying on of business activities by the relevant person;
  - (d) inspect any document found on the premises;
  - (e) require any person on the premises to provide an explanation of any document or to state where it may be found.
- (2) An enforcement officer may take copies of, or make extracts from, any document found under subsection (1).
- (3) An enforcement officer may exercise powers under this section only if the information or document sought to be obtained as a result is

reasonably required in connection with the exercise of its functions under this Part by the enforcement authority.

- (4) In this section ‘premises’ means any premises other than premises used only as a dwelling.

## 7 Entry to premises under warrant

[P2008/28/Sch7 para 21]

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by an enforcement officer that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is —
- (a) that there is on the premises proposed to be specified in the warrant a document in relation to which a requirement could be imposed under section 5(1)(b); and
  - (b) that if such a requirement were to be imposed —
    - (i) it would not be complied with; or
    - (ii) the document to which it relates would be removed, tampered with or destroyed.
- (3) The second set of conditions is —
- (a) that a person on whom a requirement has been imposed under section 5(1)(b) has failed (wholly or in part) to comply with it; and
  - (b) that there is on the premises proposed to be specified in the warrant a document that has been required to be produced.
- (4) The third set of conditions is —
- (a) that an enforcement officer has been obstructed in the exercise of a power under section 6; and
  - (b) that there is on the premises proposed to be specified in the warrant a document that could be inspected under section 6(1)(d).
- (5) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by an enforcement officer that there are reasonable grounds for suspecting that —
- (a) an offence under this Part has been, is being or is about to be committed by a relevant person; and
  - (b) there is on the premises proposed to be specified in the warrant a document relevant to whether that offence has been, is being or is about to be committed.
- (6) A warrant issued under this section shall authorise an enforcement officer —
- (a) to enter the premises specified in the warrant;

- (b) to be accompanied by any person specified in the warrant;
- (c) to search the premises and take possession of anything appearing to be a document specified in the warrant or to take, in relation to any such document, any other steps which may appear to be necessary for preserving it or preventing interference with it;
- (d) to take copies of, or extracts from, any document specified in the warrant;
- (e) to require any person on the premises to provide an explanation of any document appearing to be of the kind specified in the warrant or to state where it may be found;
- (f) to use such force as may reasonably be necessary.

## 8 Restrictions on powers

[P2008/28/ Sch7 para 22]

- (1) This section applies in relation to the powers conferred by —
  - (a) section 5 (power to require information or documents);
  - (b) section 6 (entry, inspection etc without warrant); or
  - (c) section 7 (entry to premises under warrant).
- (2) Those powers are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (3) The exercise of those powers and the provision of information or production of documents under them is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

## 9 Failure to comply with information requirement

[P2008/28/Sch7 para 23]

- (1) If on an application made by the enforcement authority it appears to the High Bailiff that a person (the “information defaulter”) has failed to do something that he or she was required to do under section 5(1), the High Bailiff may make an order under this section.
- (2) An order under this section may require the information defaulter —
  - (a) to do the thing that he or she failed to do within such period as may be specified in the order;
  - (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.
- (3) If the information defaulter is a body corporate, an unincorporated association or a partnership, the order may require any officer of the body or association or any partner, as the case may be, who is (wholly or

partly) responsible for the failure to meet such costs of the application as are specified in the order.

- (4) In subsection (3) ‘officer’ and ‘partner’ have the same meanings as in section 17(5).

*Enforcement: civil penalties*

## **10 Power to impose civil penalties**

[P2008/28/Sch 7 paras 25 & 29]

- (1) The enforcement authority may impose a penalty of such amount as it considers appropriate on a person who fails to comply with –
- (a) a requirement of a direction imposed under Part 2 of the Schedule; or
  - (b) a condition of a licence granted under paragraph 11 of the Schedule.

For this purpose ‘appropriate’ means effective, proportionate and dissuasive.

- (2) No penalty is to be imposed under this section if the enforcement authority is satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.
- (3) In deciding whether to impose a penalty under this section the enforcement authority must consider whether the person followed any relevant guidance which was at the time –
- (a) issued by the relevant supervisory authority or any other appropriate body; and
  - (b) published in a manner that, in its opinion, is suitable to bring the guidance to the attention of persons likely to be affected by it.
- (4) A person on whom a penalty is imposed under this section is not liable to be proceeded against for an offence under section 13 in respect of the same failure.
- (5) A penalty imposed under this section is payable to the enforcement authority and is recoverable as a debt due to the authority.
- (6) Any penalty under this section received by the enforcement authority is to be applied towards expenses incurred by it in connection with its functions under this Part or for any incidental purpose.

### **10A Civil penalty: relevant person circumventing direction requirements**

- (1) The enforcement authority may impose a penalty of such amount as it considers appropriate on a relevant person who has intentionally participated in activities knowing that the object or effect of them was

- (whether directly or indirectly) to circumvent a requirement of a direction imposed under Part 2 of the Schedule.
- (2) In subsection (1) 'appropriate' means effective, proportionate and dissuasive.
  - (3) A person on whom a penalty is imposed under this section is not liable to be proceeded against for an offence under section 13A in respect of participation in the same activities.<sup>3</sup>

## **11 Imposition of penalty by enforcement authority: procedure**

[P2008/28/ Sch7 para 27]

- (1) This section applies if the enforcement authority proposes to impose a penalty on a person under section 10.
- (2) The enforcement authority must give the person notice of —
  - (a) the proposal to impose the penalty and the proposed amount;
  - (b) the reasons for imposing the penalty; and
  - (c) the right to make representations to the authority within a specified period (which may not be less than 28 days).
- (3) The enforcement authority must then decide, within a reasonable period, whether to impose a penalty under section 10 and must give the person notice —
  - (a) if it decides not to impose a penalty, of that decision;
  - (b) if it decides to impose a penalty, of the following matters —
    - (i) the decision to impose a penalty and the amount;
    - (ii) the reasons for the decision; and
    - (iii) the right to appeal under section 12.

## **12 Appeal against imposition of civil penalty**

[P2008/28/Sch7 para 28]

- (1) A person may appeal against a decision of the enforcement authority under section 11 to a court of summary jurisdiction.
- (2) On the appeal the court may —
  - (a) set aside the decision appealed against; and
  - (b) impose any penalty that could have been imposed by the enforcement authority or remit the matter to the authority.

*Enforcement: offences***13 Offences: failure to comply with requirement imposed by direction**

[P2008/28/Sch7 para 30]

- (1) A person who fails to comply with a requirement of a direction imposed under Part 2 of the Schedule commits an offence, subject to the following provisions.
- (2) No offence is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.
- (3) In deciding whether a person has committed an offence under this section the court must consider whether the person followed any relevant guidance that was at the time —
  - (a) issued by the relevant supervisory authority or any other appropriate body; and
  - (b) published in a manner that, in its opinion, is suitable to bring the guidance to the attention of persons likely to be affected by it.
- (4) A person guilty of an offence under this section is liable —
  - (a) on conviction on information to custody for not more than 2 years, a fine, or both; or
  - (b) on summary conviction, to a fine not exceeding £5,000.
- (5) A person convicted of an offence under this section is not liable to a penalty under section 10 in respect of the same failure.

**13A Offences: relevant person circumventing direction requirements**

- (1) A relevant person who intentionally participates in activities knowing that the object or effect of them is (whether directly or indirectly) to circumvent a requirement of a direction imposed under Part 2 of the Schedule commits an offence.
- (2) A person guilty of an offence under this paragraph is liable —
  - (a) on summary conviction, to a fine not exceeding £5,000;
  - (b) on conviction on indictment, to custody for a term not exceeding 2 years or a fine or both.
- (3) A person who is convicted of an offence under this section is not liable to a penalty under section 10A in respect of participation in the same activities.<sup>4</sup>

**14 Offences in connection with licences**

[P2008/28/ Sch7 para 31]

- (1) A person commits an offence if he or she, for the purpose of obtaining a licence under paragraph 11 of the Schedule —
  - (a) provides information that is false in a material respect or a document that is not what it purports to be; and
  - (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.
- (2) A person guilty of an offence under this section is liable on conviction on information to custody for not more than 2 years, a fine, or both.

**15 Extraterritorial jurisdiction**

[P2008/28/ Sch7 para 32]

- (1) An offence under this Part may be committed by a person acting in the course of a business in the regulated sector despite the conduct giving rise to it taking place wholly or partly outside the Island.
- (2) Nothing in this section affects any criminal liability arising otherwise than under this section.

**16 Time limit for summary proceedings**

[P2008/28/ Sch7 para 35]

An information relating to an offence under this Part that is triable by a court of summary jurisdiction may be so tried if it is laid —

- (a) at any time within 3 years after the commission of the offence; and
- (b) within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

**17 Liability of officers of bodies corporate etc**

[P2008/28/ Sch7 para 36]

- (1) If an offence under this Part committed by a body corporate is shown —
  - (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
  - (b) to be attributable to any neglect on the part of any such officer,the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.
- (2) If an offence under this Part committed by a partnership is shown —
  - (a) to have been committed with the consent or the connivance of a partner; or
  - (b) to be attributable to any neglect on the part of a partner,

the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.

(3) If an offence under this Part committed by an unincorporated association (other than a partnership) is shown —

(a) to have been committed with the consent or the connivance of an officer of the association; or

(b) to be attributable to any neglect on the part of any such officer,

the officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.

(4) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body.

(5) In this section —

'officer' includes —

(a) in relation to a body corporate, a director, manager, secretary, chief executive, member of the committee of management and its registered agent;

(b) in relation to an unincorporated association, any officer of the association and any member of its governing body; and

(c) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, the company's manager, the registered agent and its members,

and any person purporting to act in such a capacity;

'partner' includes a person holding himself or herself out to be a partner (within the meaning of section 16(1) of the *Partnership Act 1909*).

## 18 Proceedings against unincorporated bodies

[P2008/28/ Sch7 para 37]

(1) Proceedings for an offence under this Part alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) In proceedings for such an offence brought against a partnership or unincorporated association —

(a) section 10 of the *Criminal Jurisdiction Act 1993* (arraignment); and

(b) section 32 of the *Summary Jurisdiction Act 1989* (procedure),

apply as they do in relation to a body corporate.

- (3) Rules of court relating to the service of documents have effect in relation to proceedings for an offence under this Part as if the partnership or association were a body corporate.
- (4) A fine imposed on the partnership or association on its conviction of such an offence is to be paid out of the funds of the partnership or association.

*Supplementary and general*

## **19 Report to Tynwald**

[P2008/28/ Sch7 para 38]

- (1) As soon as reasonably practicable after the end of each calendar year the Treasury must —
  - (a) prepare a report —
    - (i) about its exercise during that year of its functions under this Part; or
    - (ii) indicating that that it has not exercised its functions under this Part during that year; and<sup>5</sup>
  - (b) lay a copy of the report before Tynwald.
- (2) [Repealed]<sup>6</sup>

## **20 Supervision by supervisory authority**

[P2008/28/ Sch7 para 39]

- (1) The relevant supervisory authority must take appropriate measures to monitor persons acting in the course of a business in the regulated sector for the purpose of securing compliance by those persons with the requirements of any directions imposed under Part 2 of the Schedule.
- (2) For the purposes of this Act the relevant supervisory authority is such body, being a body mentioned in paragraph 2 of Schedule 4 to the *Proceeds of Crime Act 2008*, as determined by the Treasury in respect of any of the persons mentioned in subsection (1).
- (3) The Treasury must —
  - (a) where directions have been given to specified persons acting in the course of a business in the regulated sector, notify those persons of the determination as it affects them;
  - (b) where directions have been given to all persons acting in the course of a business in the regulated sector or to a description of such persons, publish the determination in such way as it considers appropriate.

**21 Assistance in preparing guidance**

[P2008/28/Sch7 para 40]

The Treasury must provide such assistance as may reasonably be required by the relevant supervisory authority or other appropriate body drawing up guidance that, when issued and published would be relevant guidance for the purposes of section 10(3) (civil penalties) and 13(3) (offences: failure to comply with requirement imposed by direction).

**22 Notices**

[P2008/28/Sch7 para 42]

- (1) A notice under this Act may be given to a person —
  - (a) by posting it to the person's last known address; or
  - (b) where the person is a body corporate, partnership or unincorporated association, by posting it to the registered or principal office of the body, partnership or association.
- (2) The body required to give a notice to a person under this Act must take all reasonable steps to contact the person, including publishing an advertisement in a newspaper circulating in the Island.

**PART 3 – FINANCIAL RESTRICTIONS PROCEEDINGS****23 Application to set aside financial restrictions decision**

[P2008/28/63]

- (1) This section applies to any decision of the Treasury in connection with the exercise of any of its functions under —
  - (a) the UN terrorism orders;
  - (b) Part VII of the *Anti-Terrorism and Crime Act 2003* (freezing orders); or
  - (c) Part 2 of, and the Schedule to, this Act (terrorist financing, money laundering and certain other activities: financial restrictions).
- (2) Any person affected by the decision may apply to the High Court to set aside the decision.
- (3) On such an application the High Court may make such order as it considers appropriate.<sup>7</sup>
- (4) [Repealed]<sup>8</sup>
- (5) If the court sets aside a decision of the Treasury —
  - (a) to give a direction under any of the UN terrorism orders;
  - (b) to make a freezing order under Part VII of the *Anti-Terrorism and Crime Act 2003*; or

- (c) to give a direction or make an order under Part 2 of, and the Schedule to, this Act,  
the court must quash the relevant direction or order.<sup>9</sup>
- (6) This section applies whether the decision of the Treasury was made before or after the commencement of this section.
- (7) After the commencement of this section an application to set aside a decision of the Treasury to which this section applies may only be made under this section.
- (8) This section does not apply to any decision of the Treasury to make an order under paragraph 1(3) of the Schedule.

## 24 Meaning of UN terrorism orders

[P2008/28/64]

- (1) For the purposes of section 23 the UN terrorism orders are —
  - (a) [Repealed]<sup>10</sup>
  - (b) the Al-Qa'ida and Taliban (United Nations Measures) (Isle of Man) Order 2002 [S.I. 2002/259].
- (2) The Treasury may by order amend subsection (1) by —
  - (a) adding other Orders in Council made under section 1 of the United Nations Act 1946 (of Parliament);
  - (b) providing that a reference to a specified Order in Council is to that order as amended by a further Order in Council (made after the passing of this Act); or
  - (c) removing an Order in Council.
- (3) An order under subsection (2) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that it be annulled, it ceases to have effect.

## 25 General provisions about rules of court

[P2008/28/66]

- (1) The following provisions apply to rules of court relating to —
  - (a) financial restrictions proceedings; or
  - (b) proceedings on an appeal relating to financial restrictions proceedings.
- (2) No rules of court may be made without regard having been had to —
  - (a) the need to secure that the decisions that are the subject of the proceedings are properly reviewed; and
  - (b) the need to secure that disclosures of information are not made where they would be contrary to the public interest.

- (3) Rules of court may make provision —
  - (a) about the mode of proof and about evidence in the proceedings;
  - (b) enabling or requiring the proceedings to be determined without a hearing; and
  - (c) about legal representation in the proceedings.
- (4) Rules of court may make provision —
  - (a) enabling the proceedings to take place without full particulars of the reasons for the decisions to which the proceedings relate being given to a party to the proceedings (or to any legal representative of that party);
  - (b) enabling the court to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of that party);
  - (c) about the functions of a person appointed as a special advocate;
  - (d) enabling the court to give a party to the proceedings a summary of evidence taken in the party's absence.
- (5) In this section —
  - (a) references to a party to the proceedings do not include the Treasury;
  - (b) references to a party's legal representative do not include a person appointed as a special advocate.
- (6) Nothing in this section shall be read as restricting the power to make rules of court or the matters to be taken into account when doing so.

## 26 Rules of court about disclosure

[P2008/28/67]

- (1) The following provisions apply to rules of court relating to —
  - (a) financial restrictions proceedings; or
  - (b) proceedings on an appeal relating to financial restrictions proceedings.
- (2) Rules of court must secure that the Treasury is required to disclose —
  - (a) material on which it relies;
  - (b) material which adversely affects its case; and
  - (c) material which supports the case of a party to the proceedings.

This is subject to the following provisions of this section.
- (3) Rules of court must secure —
  - (a) that the Treasury has the opportunity to make an application to the court for permission not to disclose material otherwise than to —

- (i) the court; and
    - (ii) any person appointed as a special advocate;
  - (b) that such an application is always considered in the absence of every party to the proceedings (and every party's legal representative);
  - (c) that the court is required to give permission for material not to be disclosed if it considers that the disclosure of the material would be contrary to the public interest;
  - (d) that, if permission is given by the court not to disclose material, it must consider requiring the Treasury to provide a summary of the material to every party to the proceedings (and every party's legal representative);
  - (e) that the court is required to ensure that such a summary does not contain material the disclosure of which would be contrary to the public interest.
- (4) Rules of court must secure that in cases where the Treasury —
- (a) does not receive the court's permission to withhold material, but elects not to disclose it; or
  - (b) is required to provide a party to the proceedings with a summary of material that is withheld, but elects not to provide the summary,
- provision to the following effect applies.
- (5) The court must be authorised —
- (a) if it considers that the material or anything that is required to be summarised might adversely affect the Treasury's case or support the case of a party to the proceedings, to direct that the Treasury shall not rely on such points in its case, or shall make such concessions or take such other steps, as the court may specify; or
  - (b) in any other case, to ensure that the Treasury does not rely on the material or (as the case may be) on that which is required to be summarised.
- (6) Nothing in this section, or in rules of court made under it, is to be read as requiring the court to act in a manner inconsistent with Article 6 of the Convention (within the meaning of section 19(1) of the *Human Rights Act 2001*).
- (7) In this section —
- (a) references to a party to the proceedings do not include the Treasury;
  - (b) references to a party's legal representative do not include a person appointed as a special advocate.

**27 Appointment of special advocate**

[P2008/28/68]

- (1) The Attorney General may appoint a person to represent the interests of a party to —
  - (a) financial restrictions proceedings; or
  - (b) proceedings on an appeal, or further appeal, relating to financial restrictions proceedings,in any of those proceedings from which the party (and any legal representative of the party) is excluded.
- (2) A person appointed as a special advocate is not responsible to the party to the proceedings whose interests the person is appointed to represent.
- (3) A person may only be appointed as a special advocate if he or she is qualified to act as an advocate in accordance with section 7 of the *Advocates Act 1976*.

**PART 3A - CODES FOR PREVENTING AND DETECTING  
TERRORIST FINANCING<sup>11</sup>****27A Terrorism Financing Codes**

[2008/13/157]

- (1) The Department of Home Affairs must make such codes as it considers appropriate for the purpose of preventing and detecting terrorist financing.
- (2) Without limiting the generality of subsection (1), a code may —
  - (a) provide practical guidance with respect to the requirements of any statutory provision relating to the benefits or proceeds of terrorism or the treatment of terrorist property;
  - (b) require any person carrying on a business in the regulated sector to institute and operate such systems, procedures, record-keeping, controls and training as may be specified in the code;
  - (c) require persons carrying on, employed in or otherwise concerned in a business in the regulated sector to comply with such systems, procedures, record-keeping, controls and training as are required to be instituted and operated under paragraph (b);
  - (d) provide that in such cases of contravention of a code as are specified in the code, such persons as are so specified shall each be guilty of an offence and liable —
    - (i) on summary conviction, to custody for not more than 12 months, a fine not exceeding £5,000, or both; and

- (ii) on conviction on information, to custody for not more than 2 years, a fine, or both.
- (3) A code under this section may incorporate by reference any relevant regulations, code, directions and guidance made or issued by any relevant supervisory authority or any other appropriate body.
- (4) Before making a code under this section the Department of Home Affairs must consult any person or body that appears to it to be appropriate.
- (5) A code under this section must not come into operation unless it is approved by Tynwald.
- (6) A code under this section —
  - (a) may make different provision for different purposes;
  - (b) may include supplementary, incidental, saving or transitional provision.
- (7) A failure on the part of any person to observe any provision of a code does not of itself render that person liable to —
  - (a) any civil proceeding; or
  - (b) except as provided under subsection (2)(d), any criminal proceeding.
- (8) In this section ‘terrorist property’ has the same meaning as in section 6 of the *Anti-Terrorism and Crime Act 2003*.<sup>12</sup>

## PART 4 – AMENDMENTS

### 28 Amendments to the *Anti-Terrorism and Crime Act 2003*

[P2008/28/ 70&75]

- (1) Amends the *Anti-Terrorism and Crime Act 2003* as follows.
- (2) [Amends section 1(1) of the *Anti-Terrorism and Crime Act 2003* by inserting in paragraph (c) ‘, racial’ after ‘religious’.]
- (3) [Amends Schedule 9 of the *Anti-Terrorism and Crime Act 2003* by adding subparagraph 10(3).]

### 29 Amendments to the *Financial Services Act 2008*

- (1) Amends the *Financial Services Act 2008* as follows.
- (2) [Amends section 33(4) of the *Financial Services Act 2008* by adding paragraphs (g) and (h) to the definition of ‘specified enactment’].<sup>13</sup>

### 30 Amendments to the *Insurance Act 2008*

- (1) Amends 49 of the *Insurance Act 2008* as follows.

- (2) [Amends section 49 of the *Insurance Act 2008* by substituting in subsection (1) ‘any enactment referred to in subsection (3)’ for ‘this Act, the *Retirement Benefits Schemes Act 2000*, the *Insurance Companies (Amalgamations) Act 2006*, any enactment wholly repealed by this Act or any orders or regulations made under any of those enactments’.]
- (3) [Amends section 49 of the *Insurance Act 2008* by adding subsection (3).]

## SCHEDULE

### DIRECTIONS BY THE TREASURY

Section 4 [P2008/24/Sch 7 Parts 2-4]

#### PART 1 – PERSONS TO WHOM A DIRECTION MAY BE GIVEN

1. (1) A direction may 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.
- (2) A direction may make different provision in relation to different descriptions of relevant person.
- (3) The Treasury may by order amend this Schedule so as to make any other provision as to the persons to whom a direction may be given.
- (4) Any such order must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which it is laid or at the next following sitting fails to approve it, the order ceases to have effect.

#### PART 2 – REQUIREMENTS THAT MAY BE IMPOSED BY A DIRECTION

##### *Interpretation*

2. (1) In this Part —

**‘business relationship’** means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

**‘customer due diligence measures’** means measures to —

  - (a) establish the identity of the designated person;
  - (b) obtain information about —
    - (i) the designated person and the person’s business; and
    - (ii) the source of the person’s funds; and
  - (c) assess the risk of the designated person’s being involved in —

- (i) terrorist financing;
- (ii) money laundering; or
- (iii) the development or production of nuclear, radiological, biological or chemical weapons or the facilitation of that development or production;

‘**designated person**’, in relation to a direction, means any of the persons in relation to whom the direction is given.

(2) In this Part a reference to a transaction or business relationship with a designated person includes a reference to a transaction or business relationship with any third party that ultimately benefits, or is intended to benefit, a designated person.

*Requirements that may be imposed by a direction*

3. (1) A direction may impose requirements in relation to transactions or business relationships with —

- (a) a person carrying on business in the country concerned;
- (b) the government of the country;
- (c) a person resident or incorporated in the country; or
- (d) a body corporate that is a subsidiary of a body corporate within paragraph (a) or (c).<sup>14</sup>

(2) The direction may impose requirements in relation to —

- (a) a particular person within sub-paragraph (1);
- (b) any description of persons within that sub-paragraph; or
- (c) all persons within that sub-paragraph.

(3) The kinds of requirement that may be imposed by a direction are specified in paragraphs 4 to 7.

(4) A direction may make different provision —

- (a) in relation to different descriptions of designated person; and
- (b) in relation to different descriptions of transaction or business relationship.

(5) The requirements imposed by a direction must be proportionate having regard to the advice mentioned in section 4(2) or, as the case may be, the risk mentioned in subsections (3) or (4) of that section, to the national interests of the Island.

(6) In this paragraph ‘subsidiary’ means a body corporate (whether or not incorporate under the Companies Acts 1931 to 2004) that is a subsidiary of another body corporate (whether or not incorporated under those Acts) and in determining whether one body corporate is a subsidiary of another the provisions of section 1 of the *Companies Act 1974* shall apply with the necessary modifications.<sup>15</sup>

*Customer due diligence*

4. (1) A direction may require a relevant person to undertake enhanced customer due diligence measures —
- (a) before entering into a transaction or business relationship with a designated person; and
  - (b) during a business relationship with such a person.
- (2) The direction may do either or both of the following —
- (a) impose a general obligation to undertake enhanced customer due diligence measures;
  - (b) require a relevant person to undertake specific measures identified or described in the direction.

*Ongoing monitoring*

5. (1) A direction may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a designated person.
- (2) The direction may do either or both of the following —
- (a) impose a general obligation to undertake enhanced ongoing monitoring;
  - (b) require a relevant person to undertake specific measures identified or described in the direction.
- (3) ‘Ongoing monitoring’ of a business relationship means —
- (a) keeping up to date information and documents obtained for the purposes of customer due diligence measures; and
  - (b) scrutinising transactions undertaken or proposed to be undertaken during the course of the relationship (and, where appropriate, the source of funds for those transactions) to ascertain whether the transactions are consistent with the relevant person’s knowledge of the designated person and the person’s business.

*Systematic reporting*

6. (1) A direction may require a relevant person to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons.
- (2) A direction imposing such a requirement must specify how the direction is to be complied with, including —
- (a) the person to whom the information and documents are to be provided; and
  - (b) the period within which, or intervals at which, information and documents are to be provided.

(3) The power conferred by this paragraph is not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(4) The exercise of the power conferred by this paragraph and the provision of information under it is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

*Limiting or ceasing business*

7. A direction may require a relevant person not to enter into or continue to participate in —

- (a) a specified transaction or business relationship with a designated person;
- (b) a specified description of transactions or business relationships with a designated person; or
- (c) any transaction or business relationship with a designated person.

### **PART 3 – PROCEDURAL PROVISIONS AND LICENSING**

*General directions to be given by order*

8. (1) A direction given to —

- (a) a description of persons acting in the course of a business in the regulated sector; or
- (b) all persons acting in the course of a business in the regulated sector,

must be contained in an order made by the Treasury.

(2) If the order contains requirements of a kind mentioned in paragraph 7 (limiting or ceasing business) it must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which it is laid or at the next following sitting fails to approve it, the order ceases to have effect.

(3) An order's ceasing to have effect in accordance with sub-paragraph (2) does not affect anything done under the order.

(4) An order to which sub-paragraph (2) does not apply must be laid before Tynwald as soon as practicable after it is made.

*Specific directions: notification and duration of directions*

9. (1) This paragraph applies in relation to a direction given to a particular person.

- (2) The Treasury must give notice of the direction to the person.

(3) The direction (if not previously revoked and whether or not varied) ceases to have effect at the end of the period of one year beginning with the day on which the direction is given. This is without prejudice to the giving of a further direction.

(4) The Treasury may vary or revoke the direction at any time.

(5) Where the direction is varied or ceases to have effect (whether on revocation or otherwise), the Treasury must give notice of that fact to the person.

*General directions: publication and duration of directions*

10. (1) This paragraph applies to an order containing directions under paragraph 8 (general directions given by order).

(2) The Treasury must take such steps as it considers appropriate to publicise the making of the order.

(3) An order —

(a) revoking the order; or

(b) varying the order so as to make its provisions less onerous,

must be laid before Tynwald as soon as practicable after it is made.

(4) The order (if not previously revoked and whether or not varied) ceases to have effect at the end of the period of one year beginning with the day on which it was made, but this does not limit the power to make a further order.

(5) If the order is varied or ceases to have effect (whether on revocation or otherwise), the Treasury must take such steps as it considers appropriate to publicise that fact.

*Directions limiting or ceasing business: exemption by licence*

11. (1) The following provisions apply where a direction contains requirements of a kind mentioned in paragraph 7 (limiting or ceasing business).

(2) The Treasury may grant a licence to exempt acts specified in the licence from those requirements.

(3) A licence may be —

(a) general or granted to a description of persons or to a particular person;

(b) subject to conditions;

(c) of indefinite duration or subject to an expiry date.

(4) The Treasury may vary or revoke a licence at any time.

(5) On the grant, variation or revocation of a licence, the Treasury must —

(a) in the case of a licence granted to a particular person, give notice of the grant, variation or revocation to that person;

- (b) in the case of a general licence or a licence granted to a description of persons, take such steps as the Treasury considers appropriate to publicise the grant, variation or revocation of the licence.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

<sup>1</sup> Definition of ‘interim direction’ inserted by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(2).

<sup>2</sup> S 4A inserted by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(3).

<sup>3</sup> S 10A inserted by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(4).

<sup>4</sup> S 13A inserted by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(5).

<sup>5</sup> Para (a) substituted by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(6).

<sup>6</sup> Subs (2) repealed by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(7).

<sup>7</sup> Subs (3) substituted by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(8)(a).

<sup>8</sup> Subs (4) repealed by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(8)(a).

<sup>9</sup> Subs (5) amended by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(8)(b).

<sup>10</sup> Para (a) repealed by Order in Council SI 2011/749.

<sup>11</sup> Part 3A inserted by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(9).

<sup>12</sup> S 27A inserted by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(9).

<sup>13</sup> (3) [Amends paragraph 2(2) of Schedule 1 of the Financial Services Act 2008 by adding item (za).

<sup>14</sup> Item (d) added by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(10)(a).

<sup>15</sup> Subpara (6) added by Anti-Terrorism and Crime (Amendment) Act 2011 s 57(10)(b).