



## CYBER ATTACK SANCTIONS REGULATIONS 2019

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Statutory Document No. 2019/0288

*European Communities (Isle of Man) Act 1973*

# CYBER ATTACK SANCTIONS REGULATIONS 2019<sup>1</sup>

*Laid before Tynwald: 16<sup>th</sup> July 2019**Coming into Operation: in accordance with regulation 2*

The Council of Ministers makes the following Regulations under sections 2B and 2C of the European Communities (Isle of Man) Act 1973.

## 1 Title

These Regulations are the Cyber Attack Sanctions Regulations 2019.

## 2 Commencement

These Regulations come into operation immediately after they are made<sup>1</sup>.

## 3 Interpretation

In these Regulations —

“**the EU Regulation**” means Council Regulation (EU) 2019/796<sup>2</sup> of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States, as this EU instrument has effect in the Island<sup>3</sup>, and a reference to a numbered Article or Annex (without more) is a reference to the Article of, or Annex to, the EU Regulation so numbered.

## 4 Breaches of the EU Regulation

- (1) A person commits an offence if the person fails to comply with the following provisions of the EU Regulation —
- (a) Article 3(1) or (2);

<sup>1</sup> Regulations made under section 2B(1) of the European Communities (Isle of Man) Act 1973 must be laid before Tynwald as soon as possible after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that the regulations should be annulled, the regulations shall upon such resolution cease to have effect.

<sup>2</sup> OJ L129, 17.5.2019, p.1.

<sup>3</sup> Council Regulation (EU) 2019/796 was applied to the Island with modifications by SD 2019/0287. As the EU Regulation has effect in the Island a reference to an Annex to the EU Regulation is construed as a reference to the Annex as amended from time to time.

- (b) Article 8(1); or
  - (c) Article 9.
- (2) But no offence is committed under paragraph (1) if a person is acting —
- (a) as permitted by Articles 4(1), 5(1), 6(1), 7(1) or (2), or 10(2); or
  - (b) in accordance with a licence obtained under regulation 5.

## 5 Authorisations, Derogations and Licences

- (1) If the Treasury receives a request for an authorisation in respect of a derogation which may be permitted under the EU Regulation, it may only grant such an authorisation, by way of a licence in writing, in accordance with the conditions set out in the EU Regulation.
- (2) The Treasury may vary or revoke a licence at any time.
- (3) The Treasury, if it grants, varies or revokes a licence, must —
- (a) in the case of a licence granted to a particular person, give written notice of the licence, variation or revocation to that person; and
  - (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Treasury considers appropriate to publicise the licence, variation or revocation.
- (4) A person commits an offence if, for the purpose of obtaining a licence the person —
- (a) makes any statement or furnishes any document or information which to the person's knowledge is false in a material particular; or
  - (b) recklessly makes any statement or furnishes any document or information which is false in a material particular.
- (5) If an offence is committed under paragraph (4) any licence granted in connection with the application for which the false statement was made or the false document or information furnished shall be void as from the time it was granted.
- (6) A person who, having acted under the authority of a licence granted under these Regulations, fails to comply with any of the requirements or conditions to which the licence is subject commits an offence, unless —
- (a) the licence has been varied by the Treasury;
  - (b) the alleged failure to comply would not have been a failure had the licence not been so varied; and
  - (c) either —
    - (i) the licence was varied after the doing of the act authorised by the licence; or
    - (ii) the person did not know and had no reasonable grounds to suspect that the licence had been varied.

## 6 Information

The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Treasury, of information for the purpose of ensuring compliance with the EU Regulation.

## 7 Liability of officers of body corporate etc.

- (1) If an offence under these Regulations 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 these Regulations 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 these Regulations 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, paragraph (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 regulation —

**“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).

## 8 Penalties and proceedings

- (1) A person who commits an offence under regulation 4(1), 5(4) or (6), or paragraph 2(b) or (c) of the Schedule is liable —
  - (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both; or
  - (b) on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding level 5 on the Standard Scale, or both.
- (2) A person who commits an offence under paragraph 2(a) or 3(6) of the Schedule, is liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding level 5 on the Standard Scale, or both.
- (3) The consent of either the Treasury or the Attorney General is a prerequisite for the commencement of proceedings for any offence other than a summary offence.
- (4) Regardless of whether or not the consent required by paragraph (3) has been obtained, a person may be —
  - (a) arrested, whether or not in execution of a warrant for the person’s arrest;
  - (b) remanded in custody; or
  - (c) released on bail,for an offence to which paragraph (3) applies.

MADE 18:10 12<sup>TH</sup> JUNE 2019

**SCHEDULE**

[Regulation 6]

**INFORMATION****1 Powers to request information**

- (1) The Treasury (or any person authorised by the Treasury for that purpose, either generally or in a particular case) (“the requesting authority”) may request any person in or resident in the Island to furnish to the requesting authority any information in his or her possession or control, or to produce to the requesting authority any document in his or her possession or control, which the requesting authority may require for the purpose of ensuring compliance with the EU Regulation; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.
- (2) If a person is convicted of an offence under paragraph 2 of failing to furnish any information or produce any document, the court may make an order requiring that person, within such period as may be specified in the order, to furnish the information or produce the document.
- (3) The power conferred by this paragraph to request any person to produce documents includes power to take copies of or extracts from any document so produced and to request that person or, if that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

**2 Failure to comply with request for information**

A person commits an offence if the person —

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule;
- (b) intentionally furnishes false information or a false explanation to any person exercising his or her powers under this Schedule; or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document.

**3 General powers to disclose information**

- (1) The Treasury (or any person authorised by the Treasury as a “requesting authority” under paragraph 1) may disclose any information obtained by it pursuant to these Regulations to any person for the purpose of facilitating or ensuring compliance with the EU Regulation.

- (2) The power in sub-paragraph (1) includes but is not limited to disclosing information to the following persons —
- (a) a police officer;
  - (b) any person holding or acting in any office under, or in the service of —
    - (i) the Government of the Island;
    - (ii) the Crown in right of the Government of the United Kingdom;
    - (iii) the Crown in right of the Scottish Administration, the Northern Ireland Executive or the Welsh Government;
    - (iv) the States of Jersey, Guernsey or Alderney or the Chief of Pleas of Sark; or
    - (v) the Government of any British overseas territory;
  - (c) any law officer of the Crown in any of the British Islands;
  - (d) the Legal Aid Agency in England and Wales, the Scottish Legal Aid Board or the Legal Services Agency Northern Ireland;
  - (e) the Isle of Man Financial Services Authority and any body of any other part of the British Islands exercising an equivalent function;
  - (f) any organ of the United Nations;
  - (g) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country;
  - (h) any of the competent authorities specified in, and for the purpose of ensuring compliance, with the EU Regulation; or
  - (i) with the consent of a person who, in the person's own right, is entitled to the information or to possession of the document, copy or extract, to any third party.
- (3) In sub-paragraph (2)(i) "in the person's own right" means not merely in the capacity as a servant or agent of another person.
- (4) The purpose of facilitating or ensuring compliance with the EU Regulation includes but is not limited to the following —
- (a) monitoring compliance with, or detecting evasion of, these Regulations or the EU Regulation;
  - (b) giving assistance or co-operation, pursuant to the EU Regulation; or
  - (c) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings —
    - (i) in the Island for an offence under these Regulations; or



- (ii) in any other part of the British Islands or any British overseas territory, for an offence under a similar provision in any such jurisdiction.
- (5) A disclosure under sub-paragraph (1) does not breach –
  - (a) any obligation of confidence owed by the person making the disclosure; or
  - (b) any other restriction on the disclosure of information (however imposed).
- (6) A person commits an offence if the person, without reasonable excuse, discloses information otherwise than in accordance with sub-paragraph (1).

#### 4 Application of provisions

- (1) Nothing done under this Schedule is to be treated as a breach of any regulation imposed by statute or otherwise.
- (2) But nothing in this Schedule authorises a disclosure –
  - (a) that contravenes data protection legislation; or
  - (b) of intercepted material that is not otherwise permitted under the safeguards arrangements relating to a warrant issued under the Interception of Communications Act 1988.
- (3) Nothing in this Schedule is to be read as requiring a person who has acted as advocate or other legal adviser to any person to disclose any privileged information in their possession in that capacity.
- (4) This Schedule does not limit the circumstances in which information may be disclosed apart from this Schedule.
- (5) This Schedule does not limit the powers of the Treasury to impose conditions in connection with the discharge of its functions under regulation 5.
- (6) In this paragraph –
  - (a) “**data protection legislation**” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018<sup>4</sup>; and
  - (b) “**privileged information**” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

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<sup>4</sup> SD 2018/0145.

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.