



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*



Consultation on amendments to  
the Proceeds of Crime Act 2008  
&  
the Anti-Terrorism and Crime Act 2003  
in respect of 'Tipping-off'

Cabinet Office  
Oik Coonceil ny Shirveishee

March 2019

## **1. Introduction**

This paper is issued by the Cabinet Office for the purpose of obtaining views and where relevant, evidence to support those views, on the proposed amendments, by Order, to the [Proceeds of Crime Act 2008](#) (POCA) and the [Anti-Terrorism and Crime Act 2003](#) (ATCA).

These proposed amendments seek to address a number of technical compliance deficiencies and other issues highlighted in the [MONEYVAL Mutual Evaluation report of the Isle of Man](#), pertaining to tipping off.

## **2. Submissions**

The deadline for responses is 11<sup>th</sup> April 2019.

Responses must be made in writing and sent by email or post to:

[amlcft@gov.im](mailto:amlcft@gov.im)

AML/CFT Policy Office  
Cabinet Office  
Third Floor, Government Office  
Bucks Road  
Douglas  
IM1 3PN

## **3. Orders**

Two Orders have been drafted and are included at Appendix 1 and Appendix 2. A summary of the proposed amendments and the underlying rationale is included below:

### **i) Proceeds of Crime Act (Compliance with the International Standards) (No.3) Order 2019**

### **ii) Anti-Terrorism and Crime Act (Compliance with International Standards) Order 2019**

The MONEYVAL assessors considered that legislation in relation tipping-off was set too narrowly, as tipping-off only occurs in IoM legislation when disclosure that a suspicious activity report (SAR) has been made is likely to prejudice an investigation. This is not commensurate with FATF Recommendation 21 – Tipping-Off and Confidentiality which requires that financial institutions, their directors, officers and employees should be prohibited by law from disclosing the fact that a SAR or related information is being filed with the FIU. This issue was previously identified in the 2009 IMF report on the IoM and has yet to be addressed.

It is therefore proposed that the tipping-off offence in POCA is amended, as per the FATF Recommendation but that further, so as to allow proper liaison within the regulated and Designated Non-Financial Businesses and Professions (DNFBP) sectors when suspicions are held, that POCA is further amended to provide for voluntary information sharing, in certain

circumstances. In relation to ATCA, there is currently no tipping-off offence, albeit there is an offence of prejudicing an investigation. Hence, it is proposed that a tipping-off offence, compliant with FATF Recommendation 21 is introduced and that voluntary information sharing in certain circumstances is also permitted. As the SAR regime within ATCA is not currently as clear as that within POCA, amendments are also proposed to provide clarity to the SAR regime under ATCA.

The IoM is reporting regularly to MONEVAL on progress being made against deficiencies identified within the MER and the Government is therefore keen to report to MONEYVAL in relation to progress against Recommendation 21. The Government however wishes to have the views of relevant persons regarding addressing the matter of tipping-off.

The Cabinet Office, in consultation with the Financial Intelligence Unit and other relevant authorities, seeks to remedy this issue through amending the following sections of POCA based on sections 333ZB – 333ZG of the UK POCA 2002.

section 145 Tipping off: regulated sector

section 148A Voluntary information sharing within the regulated sector

section 148B Information sharing requests and required notifications

section 148C Section 148A: effect on required disclosures under section 142 or 143

section 148D Limitations on application of section 148C(2) and (3)

section 148E Section 148A: supplementary

Provisions would also be inserted into ATCA, based on sections 21ZA, 21ZB, 21ZC 21CA-21CF, 21D-21H of the UK Terrorism Act 2000:

section 13A Arrangements with prior consent

section 13B Disclosure after entering into arrangements

section 13C Reasonable excuse for failure to disclose

section 15ZA Voluntary information sharing within the regulated sector

section 15ZB section 15ZA Information sharing requests and notifications

section 15ZC section 15ZA Effect of disclosure under section 14

section 15ZD Limitations on application of section 15ZC (2) and (3)

section 15ZE section 15ZA Supplementary

section 15ZF section 15ZA – 15ZE Interpretation

section 15ZG Tipping-off regulated sector

section 15ZH Disclosures within an undertaking or group etc.

section 15ZI Other permitted disclosures between institutions etc.

section 15ZJ Other permitted disclosures etc.

section 15ZK Interpretation of sections 15ZG – 15ZJ

#### **4. Powers**

Section 222A of POCA and section 76B of ATCA give powers to the Council of Ministers by Order to amend the Acts respectively, to ensure compliance with international standards or the recommendations of international bodies involved with upholding such standards. Both POCA and ATCA specify that the term 'international bodies' includes the Financial Action Task Force (FATF) and MONEYVAL, which apply in the case of these draft Orders. The Orders are subject to Tynwald approval following consultation with interested parties.

#### **5. Next steps**

Following this consultation exercise, any amendments arising in response to the proposed changes will be considered and amendments incorporated into the Orders where required. The Orders will then be considered by the Council of Ministers. Subject to Council approval, the Orders will be laid before one sitting of Tynwald, but can only be made at a subsequent sitting of Tynwald.

**AML/CFT Policy Office**  
**Cabinet Office**

Statutory Document No. 20XX/XXXX

C

*Proceeds of Crime Act 2008*

## PROCEEDS OF CRIME ACT (COMPLIANCE WITH INTERNATIONAL STANDARDS) (NO.3) ORDER 2019

*Draft laid before Tynwald:*

*Draft approved by Tynwald:*

*Coming into Operation: in accordance with article 2*

The Council of Ministers, having consulted such persons and bodies as it considers appropriate<sup>1</sup>, makes the following Order under section 222A of the Proceeds of Crime Act 2008.

### 1 Title

This Order is the Proceeds of Crime Act (Compliance with International Standards) (No.3) Order 2019.

### 2 Commencement

If approved by Tynwald, this Order comes into operation on the day after approval is given<sup>2</sup>.

### 3 Proceeds of Crime Act 2008 amended

(1) The Proceeds of Crime Act 2008 is amended as follows.

(2) In section 145 (tipping off: regulated sector) —

(a) for subsection (1), substitute —

«(1) A person commits an offence if the person discloses any matter within subsection (2).»; and

(b) for subsection (3) substitute —

<sup>1</sup> Consultation is required under section 222A(5)(a) of the Proceeds of Crime Act 2008.

<sup>2</sup> Section 222A(5)(b) states that no order under subsection (1) unless “a draft of the proposed order has been laid before a sitting of Tynwald and that draft has been approved at a subsequent sitting of Tynwald”.

- «(3) A person commits an offence if the person discloses that an investigation into allegations that an offence under this Part has been committed, is being contemplated or is being carried out.»;  
and
- (c) after subsection (3), insert —
  - «(3A) To avoid doubt, an offence is committed under subsections (1) and (3) whether or not the person's actions result in prejudice to an investigation.».
- (3) In section 148(1)(a) (other permitted disclosures, etc.), insert —
  - «(aa) made in good faith by virtue of section 148A (disclosures within the regulated sector); or».
- (4) Section 148(3) and (4) (other permitted disclosures – defence) is omitted.
- (5) After section 148, insert —

**«148A Voluntary information sharing within the regulated sector**

P2002/29/339ZB and drafting

- (1) A person (A) may share information with one or more other persons if conditions 1 to 4 are met.
- (2) Condition 1 is that —
  - (a) A is carrying on a business in the regulated sector as a relevant undertaking;
  - (b) the information to be shared came to A in the course of carrying on that business; and
  - (c) the person with whom the information is to be shared (or each of them, where the information is to be shared with more than one person) is also carrying on a business in the regulated sector as a relevant undertaking (whether or not of the same kind as A).
- (3) Condition 2 is that —
  - (a) the FIU has requested that A shares the information; or
  - (b) the person with whom the information is to be shared (or at least one of them, where the information is to be shared with more than one person) has submitted a request to A to do so.
- (4) Condition 3 is that, before A shares the information, the required notification has been made to the FIU (see section 148B(3) to (5)).
- (5) Condition 4 is that A is satisfied that sharing the information will or may assist in determining any matter in connection with a suspicion that a person is engaged in money laundering.

- (6) A person may share information with A for the purposes of making an information sharing request if, and to the extent that, the person has reason to believe that A has in A's possession information that will or may assist in determining any matter in connection with a suspicion that a person is engaged in money laundering.

**148B Section 148A: information sharing requests and required notifications**

P2002/29/339ZC and drafting

- (1) An information sharing request must —
  - (a) state that it is made in connection with a suspicion that a person is engaged in money laundering;
  - (b) identify the person (if known);
  - (c) describe the information that is sought from A; and
  - (d) specify the person or persons with whom it is requested that the information is shared.
- (2) Where the information sharing request is made by a person mentioned in section 148A(3)(b), the request must also —
  - (a) set out the grounds for the suspicion that a person is engaged in money laundering; or
  - (b) provide such other information as the person making the request thinks appropriate for the purposes of enabling A to determine whether the information requested ought to be shared under section 148A(1).
- (3) A required notification must be made —
  - (a) in the case of an information sharing request made by the FIU, by the person who is to share information under section 148A(1) as a result of the request;
  - (b) in the case of an information sharing request made by a person mentioned in section 148A(3)(b), by the person who made the request.
- (4) In a case within subsection (3)(a), the required notification must state that information is to be shared under section 148A(1).
- (5) In a case within subsection (3)(b), the required notification must —
  - (a) state that an information sharing request has been made;
  - (b) specify the person to whom the request was made;

- (c) identify any person (if known) suspected of being engaged in money laundering in connection with whom the request was made; and
- (d) provide all such other information that the person giving the notification would be required to give if making a required disclosure for the purposes of section 142 (failure to disclose: regulated sector) (see in particular subsection (6)(b) and (c) of that section).

**148C Section 148A: effect on required disclosures under section 142 or 143**

P2002/29/339ZD and drafting

- (1) This section applies if in any proceedings a question arises as to whether the required disclosure has been made for the purposes of section 142(6) or 143(6) —

- (a) by a person (A) who shares information under section 148A(1) as a result of an information sharing request;
- (b) by a person (B) who makes a required notification in accordance with section 148B(3)(b) in connection with that request; or
- (c) by any other person (C) with whom A shares information under section 148A(1) as a result of that request.

- (2) The making of a required notification in good faith is to be treated as satisfying any requirement to make the required disclosure on the part of A, B and C.

This is subject to section 148D(1) to (8).

- (3) The making of a joint disclosure report in good faith is to be treated as satisfying any requirement to make the required disclosure on the part of the persons who jointly make the report.

This is subject to section 148D(10).

- (4) A joint disclosure report is a report to the FIU that—

- (a) is made jointly by A and B (whether or not also jointly with other persons with whom A shares information under section 148A(1));
- (b) satisfies the requirements as to content mentioned in subsection (5);
- (c) is prepared after information is shared by A with B under section 148A(1) in connection with a suspicion of a person's engagement in money laundering; and
- (d) is sent to the FIU before the end of the applicable period.

- (5) The requirements as to content are that the report must —
  - (a) explain the extent to which there are continuing grounds to suspect that the person mentioned in subsection (4)(c) is engaged in money laundering;
  - (b) identify the person (if known);
  - (c) set out the grounds for the suspicion; and
  - (d) provide any other information relevant to the matter.
- (6) The applicable period is —
  - (a) in a case where the information was shared under section 148A as a result of an information sharing request from the FIU under subsection (3)(a) of that section, whatever period may be specified by the officer when making the request;
  - (b) in a case where the information was shared as a result of an information sharing request from another person under subsection (3)(b) of that section, the period of 84 days beginning with the day on which a required notification is made in connection with the request.
- (7) A joint disclosure report must be —
  - (a) approved by the nominated officer of each person that jointly makes the report; and
  - (b) signed by the nominated officer on behalf of each such person.

If there is no nominated officer the report must be approved and signed by another senior officer.
- (8) References in this section to A, B or C include —
  - (a) a nominated officer acting on behalf of A, B or C; and
  - (b) any other person who is an employee, officer or partner of A, B or C.

#### **148D Limitations on application of section 148C(2) and (3)**

P2002/29/339ZE and drafting

- (1) Subsections (2) and (3) apply in a case where the required notification is made by A (notification made as a result of information sharing request received from the FIU).
- (2) Section 148C(2) has effect in the case of A, B or C only so far as relating to —
  - (a) the suspicion in connection with which the required notification is made; and

- (b) matters known, suspected or believed as a result of the making of the information sharing request concerned.
- (3) Accordingly, section 148C(2) does not remove any requirement to make the required disclosure in relation to anything known, suspected or believed that does not result only from the making of the information sharing request.
- (4) Subsections (5) to (7) apply in a case where the required notification is made by B (notification made as a result of information sharing request received from another undertaking in the regulated sector).
- (5) Section 148C(2) has effect in the case of A or C only so far as relating to —
  - (a) the suspicion in connection with which the notification by B is made; and
  - (b) matters known, suspected or believed by A or C as a result of the making of that notification.
- (6) Accordingly, section 148C(2) does not remove any requirement to make the required disclosure in relation to anything known, suspected or believed that does not result only from the making of the notification.
- (7) Section 148C(2) has effect in the case of B only so far as relating to —
  - (a) the suspicion in connection with which the notification is made; and
  - (b) matters known, suspected or believed by B at the time of the making of the notification.
- (8) If a joint disclosure report is not made before the end of the applicable period (whether the required notification was made by A or B), section 148C(2) —
  - (a) has effect only so far as relating to any requirement to make the required disclosure that would have otherwise arisen within that period; and
  - (b) does not remove a requirement to make the required disclosure so far as arising after the end of that period on the part of any person in respect of matters that may become known, suspected or believed by the person after the time when the required notification was made.
- (9) If a joint disclosure report is not made before the end of the applicable period, the person who made the required notification must notify the FIU that a report is not being made as soon as reasonably practicable after the period ends.

- (10) Section 148C(3) has effect only so far as relating to —
  - (a) the suspicion in connection with which the report is made; and
  - (b) matters known, suspected or believed at the time of the making of the report.
- (11) Terms used in this section have the same meanings as in section 148C.

#### **148E Section 148A: supplementary**

P2002/29/339ZF and drafting

- (1) A relevant information share in good faith does not breach —
  - (a) an obligation of confidence owed by the person sharing the information; or
  - (b) any other restriction on the disclosure of information, however imposed.
- (2) But a relevant information share may not include information obtained from a law enforcement agency unless that agency consents to the sharing of that information.
- (3) In a case where a person is acting on behalf of another ("the undertaking") as a nominated officer —
  - (a) a relevant information share by the undertaking must be shared by the nominated officer on behalf of the undertaking; and
  - (b) any relevant information share to the undertaking must be shared with that officer.
- (4) Subsection (1) applies whether or not the conditions in section 148A were met in respect of the relevant information share if the person sharing the information did so in the reasonable belief that the conditions were met.
- (5) In this section —  
"law enforcement agency" means —
  - (a) the FIU;
  - (b) in respect of assigned matters and revenue matters, the Treasury;
  - (c) the Isle of Man Financial Services Authority;
  - (d) the Isle of Man Gambling Supervision Commission;
  - (e) in relation to matters of consumer protection and trading standards, the Isle of Man Office of Fair Trading;

- (f) any other person operating in the Island charged with the duty of preventing, detecting, investigating or prosecuting offences; and
- (g) any person specified in section 195 ("Appropriate officers"); and

"relevant information share" means the sharing of any information in compliance, or intended compliance, with section 148A.

(6) In section 149 (interpretation of sections 145 to 148) —

- (a) for "148", in both places and in the section heading, substitute «148F»; and
- (b) for subsection (4), substitute —

«(4) In those sections —

"information sharing request" means a request made for the purposes of condition 2 in section 148A(3);

"nominated officer" means a person nominated to receive disclosures under section 142;

"relevant professional adviser" means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for —

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards;

"relevant undertaking" means any of the following —

- (a) a credit institution;
- (b) a financial institution;
- (c) a professional legal adviser;
- (d) a relevant professional adviser;
- (e) other persons (not within paragraphs (a) to (d)) whose business consists of activities listed in paragraph 1(1) of Schedule 4;

"required disclosure" has the same meaning as in section 142(6) or (as the case may be) section 143(6); and

"required notification" means a notification made for the purposes of condition 3 in section 148A(4).».

- (7) In section 160 (offences prejudicing investigation) after subsection (3)(b), insert —
- «(ba) the disclosure is of a matter within section 145(2) or (3) (tipping off: regulated sector) and the information on which the disclosure is based came to the person in the course of a business in the regulated sector;».

**MADE**

**W GREENHOW**  
*Chief Secretary*

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order amends the Proceeds of Crime Act 2008 (“the Act”) in accordance with and in order to implement recommendations made in the Fifth Round Mutual Evaluation Report of the Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (“MONEYVAL”).

This Order is made under section 222A of the Act, subsection (1) of which provides that the Council of Ministers may amend the Act in connection with the implementation of relevant international obligations or standards or the recommendations of international bodies that are involved with the adoption, monitoring or promotion of such obligations or standards, including recommendations made by MONEYVAL. Those obligations or standards include FATF Recommendations, against which MONEYVAL assessed the Island in order to produce its Mutual Evaluation Report.

The MONEYVAL recommendations in response to which the amendments are made include the need to the need to address deficiencies in FATF Recommendation 21 – Tipping Off and Confidentiality, whereby the assessment identified that the offence of tipping-off was too narrowly set since it only applied where a disclosure was “likely to prejudice any investigation that might be conducted” following the disclosure to the FIU. This is not the definition used by FATF.

Statutory Document No. 20XX/XXXX

# C

*Anti-Terrorism and Crime Act 2003*

## ANTI-TERRORISM AND CRIME ACT (COMPLIANCE WITH INTERNATIONAL STANDARDS) ORDER 2019

*Draft laid before Tynwald:*

*Draft approved by Tynwald:*

*Coming into Operation: in accordance with article 2*

The Council of Ministers, having consulted such persons and bodies as it considers appropriate<sup>1</sup>, makes the following Order under section 76B of the Anti-Terrorism and Crime Act 2003.

### 1 Title

This Order is the Anti-Terrorism and Crime Act (Compliance with International Standards) Order 2019.

### 2 Commencement

If approved by Tynwald, this Order comes into operation on the day after approval is given<sup>2</sup>.

### 3 Anti-Terrorism and Crime Act 2003 amended

(1) The *Anti-Terrorism and Crime Act 2003* is amended as follows.

(2) After section 13, insert —

#### «13A Arrangements with prior consent

P2000/11/21ZA

(1) A person does not commit an offence under any of sections 7, 8, 9, 9A or 10 by involvement in a transaction or an arrangement

<sup>1</sup> Consultation is required under section 76B(5)(a) of the Anti-Terrorism and Crime Act 2003.

<sup>2</sup> Section 76B(5)(b) states that no order under subsection (1) may be made unless “(b) a draft of the proposed order has been laid before a sitting of Tynwald and that draft has been approved at a subsequent sitting of Tynwald.”

relating to money or other property if, before becoming involved, the person —

- (a) discloses to the FIU the person's suspicion or belief that the money or other property is terrorist property and the information on which the suspicion or belief is based; and
- (b) has the consent of the FIU to becoming involved in the transaction or arrangement.

- (2) A person is treated as having the consent of the FIU if before the end of the notice period the person does not receive notice from the FIU that consent is refused.
- (3) The notice period is the period of 7 working days starting with the first working day after the person makes the disclosure.
- (4) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday under the *Bank Holidays Act 1989*.
- (5) The reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

### **13B Disclosure after entering into arrangements**

P2000/11/21ZB

- (1) A person does not commit an offence under any of sections 7, 8, 9, 9A or 10 by involvement in a transaction or an arrangement relating to money or other property if, after becoming involved, the person discloses to the FIU —
  - (a) the person's suspicion or belief that the money or other property is terrorist property; and
  - (b) the information on which the suspicion or belief is based.
- (2) This section applies only where —
  - (a) there is a reasonable excuse for the person's failure to make the disclosure before becoming involved in the transaction or arrangement; and
  - (b) the disclosure is made on the person's own initiative and as soon as it is reasonably practicable for the person to make it.
- (3) This section does not apply to a person if —
  - (a) the FIU forbids the person to continue involvement in the transaction or arrangement to which the disclosure relates; and
  - (b) the person continues that involvement.

- (4) The reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

### **13C Reasonable excuse for failure to disclose**

P2000/11/21ZC

It is a defence for a person charged with an offence under any of sections 7, 8, 9, 9A or 10 to prove that —

- (a) the person intended to make a disclosure of the kind mentioned in section 13A or 13B; and
- (b) there is a reasonable excuse for the person's failure to do so.».

- (3) After section 15, insert —

### **«15ZA Voluntary information sharing within the regulated sector**

P2000/11/21CA and drafting

- (1) A person (A) may share information with one or more other persons if —
  - (a) conditions 1 to 4 are met; and
  - (b) where applicable, condition 5 is also met.
- (2) Condition 1 is that —
  - (a) A is carrying on a business in the regulated sector as a relevant undertaking,
  - (b) the information on which the disclosure is based came to A in the course of carrying on that business; and
  - (c) the person with whom the information is to be shared (or each of them, where the information is to be shared with more than one person) is also carrying on a business in the regulated sector as a relevant undertaking (whether or not of the same kind as A).
- (3) Condition 2 is that —
  - (a) an authorised officer of the FIU has requested that A shares the information; or
  - (b) the person with whom the information is to be shared (or at least one of them, where the information is to be shared with more than one person) has requested A to do so.
- (4) Condition 3 is that, before A shares the information, the required notification has been made to the FIU (see section 15ZB (5) to (7)).
- (5) Condition 4 is that A is satisfied that sharing the information will or may assist in determining any matter in connection with —

- (a) a suspicion that a person is involved in the commission of a terrorist financing offence; or
  - (b) the identification of terrorist property or of its movement or use.
- (6) Condition 5 is that, before making the information sharing request, the person making the request (or at least one of them, where the request is made by more than one person) has notified the FIU that the request is to be made.
  - (7) Condition 5 does not apply where the information sharing request concerned is made by the FIU.
  - (8) A person may share information with A for the purposes of making an information sharing request if, and to the extent that, the person has reason to believe that A has in A's possession information that will or may assist in determining any matter of the kind mentioned in subsection (5)(a) or (b).

#### **15ZB Section 15ZA: information sharing requests and notifications**

P2000/11/21CB and drafting

- (1) An information sharing request must —
  - (a) state that it is made in connection with —
    - (i) a suspicion that a person is involved in the commission of a terrorist financing offence; or
    - (ii) the identification of terrorist property or of its movement or use;
  - (b) identify the person or property (so far as known);
  - (c) describe the information that is sought from A; and
  - (d) specify the person or persons with whom it is requested that the information is shared.
- (2) Subsections (3) and (4) apply where the information sharing request is made by a person mentioned in section 15ZA(3)(b).
- (3) If the request states that it is made in connection with a suspicion that a person is involved in the commission of a terrorist financing offence, the request must also —
  - (a) set out the grounds for the suspicion; or
  - (b) provide such other information as the person making the request thinks appropriate for the purposes of enabling A to determine whether the information requested ought to be disclosed under section 15ZA.
- (4) If the request states that it is made in connection with the identification of terrorist property or of its movement or use, the

request must also provide such other information as the person making the request thinks appropriate for the purposes of enabling A to determine whether the information requested ought to be disclosed under section 15ZA.

(5) A required notification for the purposes of section 15ZA(4) must be made —

- (a) in the case of an information sharing request made by the FIU, by the person who is to share information under section 15ZA as a result of the request;
- (b) in the case of an information sharing request made by a person mentioned in section 15ZA(3)(b), by the person who made the request.

(6) In a case within subsection (5)(a), the required notification must state that information is to be shared under section 15ZA.

(7) In a case within subsection (5)(b), the required notification must —

- (a) state that an information sharing request has been made;
- (b) specify the person to whom the request was made;
- (c) where the information sharing request to which the notification relates is made in connection with a suspicion of a person's involvement in the commission of a terrorist financing offence, identify the person (so far as known);
- (d) where the information sharing request to which the notification relates is made in connection with the identification of terrorist property or of its movement or use, identify the property and the person who holds it (if known).

(8) A notification for the purposes of condition 5 in subsection (6) of section 15ZA must —

- (a) state that an information sharing request is to be made;
- (b) specify the person to whom it is to be made;
- (c) describe the information to be shared as a result of the request;
- (d) explain why the request is being made.

#### **15ZC Section 15ZA: effect on disclosures under section 14**

P2000/11/21CC and drafting

(1) This section applies if in any proceedings a question arises as to whether the required disclosure has been made —

- (a) by a person (A) who shares information under section 15ZA(1) as a result of an information sharing request;

- (b) by a person (B) who makes a required notification in accordance with section 15ZB(5)(b); or
  - (c) by any other person (C) to whom A shares information under section 15ZA(1) as a result of that request.
- (2) The making of a required notification in good faith is to be treated as satisfying any requirement to make the required disclosure on the part of A, B and C.  
This is subject to section 15ZD(1) to (8).
- (3) The making of a joint disclosure report in good faith is to be treated as satisfying any requirement to make the required disclosure on the part of the persons who jointly make the report.  
This is subject to section 15ZD(10).
- (4) A joint disclosure report is a report to the FIU that —
  - (a) is made jointly by A and B (whether or not also jointly with other persons with whom A shares information under section 15ZA(1));
  - (b) satisfies the requirements as to content mentioned in subsection (5) or (as the case may be) subsection (6);
  - (c) is prepared after information is shared by A to B under section 15ZA(1) in connection with —
    - (i) a suspicion of a person's involvement in the commission of a terrorist financing offence; or
    - (ii) the identification of terrorist property or of its movement or use; and
  - (d) is sent to the FIU before the end of the applicable period.
- (5) In the case of a joint disclosure report prepared in connection with a suspicion of a person's involvement in the commission of a terrorist financing offence, the requirements as to content are that the report must —
  - (a) explain the extent to which there are continuing grounds to suspect that the person is involved in the commission of the offence;
  - (b) identify the person (if known);
  - (c) set out the grounds for the suspicion; and
  - (d) provide any other information relevant to the matter.
- (6) In the case of a joint disclosure report prepared in connection with the identification of terrorist property or of its movement or use, the requirements as to content are that the report must —
  - (a) explain the extent to which there are continuing grounds to suspect that the property is terrorist property;

- (b) identify the property and the person who holds it (if known);
  - (c) provide details of its movement or use (if known); and
  - (d) provide any other information relevant to the matter.
- (7) The applicable period is —
  - (a) in a case where the information under section 15ZA was made as a result of an information sharing request from the FIU by virtue of subsection (3)(a) of that section, whatever period may be specified by the officer when making the request;
  - (b) in a case where the information was shared as a result of a request from another person by virtue of subsection (3)(b) of that section, the period of 28 days beginning with the day on which the notification is made for the purposes of condition 3 in section 15ZA(4).
- (8) The FIU may vary the period of 28 days (whether by lengthening or shortening it) by giving written notice to the person who made the required notification.
- (9) A joint disclosure report must be —
  - (a) approved by the nominated officer of each person that jointly makes the report; and
  - (b) signed by the nominated officer on behalf of each such person.

If there is no nominated officer the report must be approved and signed by another senior officer.
- (10) References in this section to A, B or C include —
  - (a) a nominated officer acting on behalf of A, B or C; and
  - (b) any other person who is an employee, officer or partner of A, B or C.

**15ZD Limitations on application of section 15ZC(2) and (3)**

P2000/11/21CD and drafting

- (1) Subsections (2) and (3) apply in a case where the required notification is made by A (notification made as a result of information sharing request received from the FIU).
- (2) Section 15ZC(2) has effect in the case of A, B or C only so far as relating to —
  - (a) the suspicion in connection with which the required notification is made; and

- (b) matters known, suspected or believed as a result of the making of the disclosure request concerned.
- (3) Accordingly, section 15ZC(2) does not remove any requirement to make the required disclosure in relation to anything known, suspected or believed that does not result only from the making of the information sharing request.
- (4) Subsections (5) to (8) apply in a case where the required notification is made by B (notification made as a result of information sharing request received from another undertaking in the regulated sector).
- (5) Section 15ZC(2) has effect in the case of A or C only so far as relating to —
  - (a) the suspicion in connection with which the notification by B is made; and
  - (b) matters known, suspected or believed by A or C as a result of the making of that notification.
- (6) Accordingly, section 15ZC(2) does not remove any requirement to make the required disclosure in relation to anything known, suspected or believed that does not result only from the making of the notification.
- (7) Section 15ZC(2) has effect in the case of B only so far as relating to —
  - (a) the suspicion in connection with which the notification is made; and
  - (b) matters known, suspected or believed by B at the time of the making of the notification.
- (8) If a joint disclosure report is not made before the end of the applicable period (whether the required notification was made by A or B), section 15ZC(2) —
  - (a) has effect only so far as relating to any requirement to make the required disclosure that would have otherwise arisen within that period; and
  - (b) does not remove a requirement to make the required disclosure so far as arising after the end of that period on the part of any person in respect of matters that may become known, suspected or believed by the person after the time when the required notification was made.
- (9) If a joint disclosure report is not made before the end of the applicable period, the person who made the required notification must notify the FIU that a report is not being made as soon as reasonably practicable after the period ends.

- (10) Section 15ZC(3) has effect only so far as relating to —
  - (a) the suspicion in connection with which the report is made; and
  - (b) matters known, suspected or believed at the time of the making of the report.
- (11) Terms used in this section have the same meanings as in section 15ZC.

**15ZE Section 15ZA: supplementary**

P2000/11/21CE and drafting

- (1) A relevant information share in good faith does not breach —
  - (a) an obligation of confidence owed by the person making the disclosure; or
  - (b) any other restriction on the disclosure of information, however imposed.
- (2) But a relevant information share may not include information obtained from a law enforcement agency unless that agency consents to the disclosure.
- (3) In a case where a person is acting on behalf of another (“the undertaking”) as a nominated officer —
  - (a) a relevant information share by the undertaking must be shared by the nominated officer on behalf of the undertaking; and
  - (b) a relevant information share to the undertaking must be shared with that officer.
- (4) Subsection (1) applies whether or not the conditions in section 15ZA were met in respect of the relevant information share if the person sharing the information did so in the reasonable belief that the conditions were met.
- (5) In this section —  
“law enforcement agency” means —
  - (a) the FIU;
  - (b) in respect of assigned matters and revenue matters, the Treasury;
  - (c) the Isle of Man Financial Services Authority;
  - (d) the Isle of Man Gambling Supervision Commission;
  - (e) in relation to matters of consumer protection and trading standards, the Isle of Man Office of Fair Trading;

- (f) any other person operating in the Island charged with the duty of preventing, detecting, investigating or prosecuting offences; and
- (g) any person specified in section 195 of the *Proceeds of Crime Act 2008* (“Appropriate officers”); and

“relevant disclosure” means any disclosure made in compliance, or intended compliance, with section 15ZA.

### 15ZF Sections 15ZA to 15ZE: interpretation

P2000/11/21CF and drafting

- (1) This section applies for the purposes of sections 15ZA to 15ZE.
- (2) References to a business in the regulated sector are to be construed in accordance with Schedule 4 to the *Proceeds of Crime Act 2008*.
- (3) “Information sharing request” means a request made for the purposes of condition 2 in section 15ZA(3).
- (4) “Nominated officer” means a person nominated to receive disclosures under section 14.
- (5) “Relevant undertaking” means any of the following —
  - (a) a credit institution;
  - (b) a financial institution;
  - (c) a professional legal adviser;
  - (d) a relevant professional adviser;
  - (e) other persons (not within paragraphs (a) to (d)) whose business consists of activities listed in paragraph 1(1) of Schedule 4 to the *Proceeds of Crime Act 2008*.
- (6) “Required disclosure” means a disclosure that is made —
  - (a) to the FIU in connection with a suspicion that a person is involved in the commission of a terrorist financing offence; and
  - (b) for the purposes of avoiding the commission of an offence under section 14 by virtue of not satisfying the third condition in subsection (4) of that section.
- (7) “Required notification” means a notification made for the purposes of condition 3 in section 15ZA(4).
- (8) For the purposes of subsection (5) —
  - (a) “credit institution” is to be construed in accordance with an order made by the Department under section 149(5) of the *Proceeds of Crime Act 2008*;

- (b) “financial institution” is to be construed in accordance with an order made by the Department under section 149(5) of the *Proceeds of Crime Act 2008* ;
  - (c) “relevant professional adviser” has the meaning given by section 15ZK(4).
- (9) “Terrorist financing offence” means an offence under any of sections 7, 8, 9, 9A or 10.

**15ZG – Tipping off: regulated sector**

P2000/11/21D

- (1) A person commits an offence if the person discloses any matter within subsection (2).
- (2) The matters are that the person or another person has made a disclosure under a provision of this Part –
  - (a) to the FIU;
  - (b) in accordance with a procedure established by that person's employer for the making of disclosures under that provision; or
  - (c) to a nominated officer,of information that came to that person in the course of a business in the regulated sector.
- (3) A person commits an offence if the person discloses that an investigation into allegations that an offence under this Part has been committed, is being contemplated or is being carried out.
- (4) To avoid doubt, an offence is committed under subsections (1) and (3) whether or not the person's actions result in prejudice to an investigation or whether the information on which the disclosure is based came to the person in the course of a business in the regulated sector.
- (5) A person guilty of an offence under this section is liable –
  - (a) 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 to both;
  - (b) on conviction on information to custody for a term not exceeding 2 years, or to a fine, or to both.
- (6) This section is subject to –
  - (a) section 15ZH (disclosures within an undertaking or group etc);
  - (b) section 15ZI (other permitted disclosures between institutions etc); and

- (c) section 15ZJ (other permitted disclosures etc).

### **15ZH – Disclosures within an undertaking or group etc**

P2000/11/21E & 2008/13/146

- (1) An employee, officer or partner of an undertaking does not commit an offence under section 15ZG if the disclosure is to an employee, officer or partner of the same undertaking.
- (2) A person does not commit an offence under section 15ZG in respect of a disclosure by a credit institution or a financial institution if –
  - (a) the disclosure is to a credit institution or a financial institution;
  - (b) the institution to whom the disclosure is made is situated in a country or territory prescribed by the Department in –
    - (i) an order made under section 146(2)(b);
    - (ii) a code made under section 157, of the *Proceeds of Crime Act 2008*; and
  - (c) both the institution making the disclosure and the institution to which it is made belong to the same group.
- (3) In subsection (2) “group” is to be construed in accordance with any order made by the Department under subsection (5).
- (4) A professional legal adviser or a relevant professional adviser does not commit an offence under section 15ZG if –
  - (a) the disclosure is to a professional legal adviser or a relevant professional adviser;
  - (b) both the person making the disclosure and the person to whom it is made carry on business in a country or territory prescribed by the Department in –
    - (i) an order; or
    - (ii) a code made under section 157; and
  - (c) those persons perform their professional activities within different undertakings that share common ownership, management or control.
- (5) The Department may by order prescribe what is a “group” for the purposes of subsection (2) and this may be by reference to a prescription made by a body specified in the order and may be by reference to a prescription made by that body from time to time (that is, after as well as before the making of the order).

**15ZI— Other permitted disclosures between institutions etc**

P2000/11/21F

- (1) This section applies to a disclosure —
  - (a) by a credit institution to another credit institution;
  - (b) by a financial institution to another financial institution;
  - (c) by a professional legal adviser to another professional legal adviser; or
  - (d) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.
- (2) A person does not commit an offence under section 15ZG in respect of a disclosure to which this section applies if —
  - (a) the disclosure relates to —
    - (i) a client or former client of the institution or adviser making the disclosure and the institution or adviser to whom it is made;
    - (ii) a transaction involving them both; or
    - (iii) the provision of a service involving them both;
  - (b) the disclosure is for the purpose only of preventing an offence under this Part;
  - (c) the institution or adviser to whom the disclosure is made is situated in a country or territory prescribed by the Department in —
    - (i) an order made under section 146(2)(b);
    - (ii) a code made under section 157,of the *Proceeds of Crime Act 2008*; and
  - (d) the institution or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of Parts 6 to 8 of the GDPR and LED Implementing Regulations 2018<sup>3</sup> as amended from time to time (see regulation 5 of those Regulations).

**15ZJ— Other permitted disclosures etc**

P2000/11/21G

- (1) A person does not commit an offence under section 15ZG if the disclosure is —

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<sup>3</sup> SD2018/0145

- (a) to the authority that is the supervisory authority for that person;
  - (b) made in good faith by virtue of section 15ZA (voluntary disclosures within the regulated sector); or
  - (c) for the purpose of —
    - (i) the detection, investigation or prosecution of a criminal offence (whether in the Island or elsewhere);
    - (ii) an investigation under the *Proceeds of Crime Act 2008*; or
    - (iii) the enforcement of any order of a court under that Act.
- (2) A professional legal adviser or a relevant professional adviser does not commit an offence under section 15ZG if the disclosure —
- (a) is to the adviser's client; and
  - (b) is made for the purpose of dissuading the client from engaging in conduct amounting to an offence.

### 15ZK Interpretation of sections 15ZG to 15ZJ

P2000/11/21H

- (1) The references in sections 15ZG to 15ZJ —
  - (a) to a business in the regulated sector; and
  - (b) to a supervisory authority;
 are to be construed in accordance with Schedule 4 to the *Proceeds of Crime Act 2008*.
- (2) In those sections “credit institution” and “financial institution” are to be construed in accordance with an order made by the Department under section 149(5) of the *Proceeds of Crime Act 2008*.
- (3) References in those sections to a disclosure by or to a credit institution or a financial institution include disclosure by or to an employee, officer or partner of the institution acting on its behalf.
- (4) In those sections “relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for —
  - (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and

- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.».

**MADE**

**W GREENHOW**  
*Chief Secretary*

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order amends the *Anti-Terrorism and Crime Act 2003* (“the Act”) in accordance with and in order to implement recommendations made in the Fifth Round Mutual Evaluation Report of the Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (“MONEYVAL”).

This Order is made under section 76B of the Act, subsection (1) of which provides that the Council of Ministers may amend the Act in connection with the implementation of relevant international obligations or standards or the recommendations of international bodies that are involved with the adoption, monitoring or promotion of such obligations or standards, including recommendations made by MONEYVAL. Those obligations or standards include FATF Recommendations, against which MONEYVAL assessed the Island in order to produce its Mutual Evaluation Report.

The MONEYVAL recommendation in response to which the amendments are made is the need to address deficiencies in FATF Recommendation 21 – Tipping Off and Confidentiality, whereby the assessment identified that the offence of tipping-off was too narrowly set since it only applied where a disclosure was “likely to prejudice any investigation that might be conducted” following the disclosure to the FIU. This is not the definition used by FATF.



Cabinet Office  
Government Office  
Bucks Road  
Douglas  
IM1 3PN