

Statutory Document No. 2019/0206



Proceeds of Crime Act 2008

PROCEEDS OF 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 appropriate¹, makes the following Order under section 222A(1) and (2) of the Proceeds of Crime Act 2008.

1 Title

This Order is the Proceeds of Crime Act (Compliance with International Standards) Order 2019.

2 Commencement

This Order comes into operation immediately after it is made².

3 Proceeds of Crime Act 2008 amended

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

(2) In section 157 (money laundering codes) —

(a) after subsection (2), insert —

(2ZA) The Isle of Man Financial Services Authority may by regulations require a person whom it is satisfied has contravened a provision of a code to pay a civil penalty in respect of the contravention, provided that criminal proceedings have not been commenced in respect of the contravention.

(2ZB) Regulations made under subsection (2ZA) may include such provisions as are necessary to give effect to that subsection.

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

² Section 222A(5)(b) of the Proceeds of Crime Act 2008 specifies that no order under section 222A(1) may be made 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.

(2ZC) Without limiting subsection (2ZB), regulations made under subsection (2ZA) may –

(a) make provision for matters including –

- (i) the imposition of civil penalties for a contravention of a provision of a code;
- (ii) the amount of those penalties;
- (iii) the giving of written notice of the decision to require the payment of a penalty to the person concerned, together with a statement of the reasons for it;
- (iv) the publication of information relating to the decision to impose a penalty; and

(b) permit a person to exercise a discretion in respect of any matter specified in the regulations.

(2ZD) A person aggrieved may appeal, in accordance with rules made under section 8 (rules of procedure) of the *Tribunals Act 2006*, to the Financial Services Tribunal (“the Tribunal”) on the grounds that a decision to impose a penalty under regulations made under subsection (2ZA) was unreasonable having regard to all the circumstances of the case.

(2ZE) On the determination of an appeal under subsection (2ZD) the Tribunal must confirm, vary or revoke the decision in question.

(2ZF) Any variation or revocation of a decision under subsection (2ZE) does not affect the previous operation of that decision or anything duly done or suffered under it.

(2ZG) Without limiting subsection (2ZH), a decision of the Tribunal on an appeal under subsection (2ZD) is binding on the applicant and the respondent.

(2ZH) An appeal lies to the High Court, in accordance with rules of court, on a question of law from any decision of the Tribunal.

(2ZI) Any amount received as a penalty under this section shall be paid into and form part of the General Revenue of the Island. ~~22~~; and

(b) for subsection (4), substitute –

~~23~~(4) Before making a code or regulations under this section the Department of Home Affairs or the Isle of Man Financial Services Authority, as the case may be, must consult any person or body that appears to it to be appropriate. ~~22~~.

4 Consequential amendment

- (1) In consequence of article 3, the Designated Businesses (Registration and Oversight) Act 2015 is amended as follows.

- (2) In section 5(b) (functions of Authority) omit “criminal”.

MADE

W GREENHOW
Chief Secretary

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

This Order amends section 157 of 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, 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. The definition of international bodies includes MONEYVAL. The definition of international obligations or standards includes the FATF Recommendations, against which MONEYVAL assessed the Island in order to produce its Mutual Evaluation Report.

In particular, Recommendation IO3 (Supervision) recommended that the Isle of Man Financial Services Authority (“the Authority”) make greater use of sanctions in severe cases. At present section 157 of the Act only provides for criminal sanctions to be imposed in respect of a contravention of a Code made under that section. The amendment contained in this Order will supplement that power with an ability to impose a civil penalty in the case of a contravention.

The amendments empower the Authority, after consulting any person or body that appears to it to be appropriate, to make regulations so as to require a person who has contravened a code to pay a civil penalty. Such regulations require the approval of Tynwald. A civil penalty cannot be imposed if criminal proceedings have already been commenced in respect of the contravention. The decision to impose a civil penalty may be appealed, on a question of law, to the Financial Services Tribunal. Any penalty received under the new provisions is to be paid into and form part of the General Revenue of the Island.

Section 5(b) of the Designated Businesses (Registration and Oversight) Act 2015 is also amended by this Order, in consequence of the amendments made to section 157 of the Act.