

Sanctions Bill 2022

Consultation Report

Public consultation on the Sanctions Bill 2022
December 2022 – January 2023

Summary of responses

March 2023





Contents

Minister’s Foreword	2
Introduction	2
Part 1 (Introductory)	2
Part 2 (Implementation of UK sanctions)	2
Part 3 (Civil penalties)	2
Part 4 (Miscellaneous)	2
Part 5 (Amendments)	2
Next Steps	2

Minister's Foreword



Sanctions are an important tool used to maintain or restore international peace and security.

The Isle of Man Government's policy in relation to international sanctions measures is to implement these in line with those in force in the United Kingdom, which also includes implementation of United Nations sanctions.

The Sanctions Bill will provide the legislative framework in the Island to enable the effective and efficient implementation of sanctions, closely aligning with the United Kingdom measures, made under the UK Sanctions and Anti-Money Laundering Act 2018.

I would like to thank everyone who responded to this public consultation which has assisted with the drafting of the Sanctions Bill.

**Hon. Dr. Alexander Allinson, MHK
Minister for the Treasury**

Introduction

Between 16 December 2022 and 27 January 2023 the Treasury sought views on the Sanctions Bill 2022 which aims to improve the legislative framework for implementing United Nations and United Kingdom sanctions regimes.

The Treasury received 12 responses –

- 10 were received via the online consultation survey
- 2 were received in written form direct to the Treasury.

When looking at who responded to the consultation –

- 7 were on behalf of an organisation
- 5 were from individuals.

This document provides a summary of the comments received and the Treasury's response.

Part 1 (Introductory)

Clauses 1 and 2 of the Bill lay out the title of the Act and when it will come into operation. The Act will come into operation on any day or days that the Treasury determines.

Clause 3 of the Bill sets out the meanings of various terms used in the Bill and provides the Treasury with the power to amend the definitions, as may be required from time to time.

We asked:

1. Do you support clauses 1 to 3 of the Bill as currently drafted?
2. Please provide any further comments you have on clauses 1 to 3 of the Bill.

You said:

Total response to question 1	12	Percentage
Yes	8	66.7%
No	3	25%
Don't know	1	8.3%

We did:

It is the intention of the Treasury to be as closely aligned to the UK sanctions regimes as possible, with modifications only made where necessary to ensure that the legislation works in the Isle of Man context. For example this may include references to enforcement agencies in the Island rather than the UK, references to Manx legislation rather than UK legislation, references to Manx criminal proceedings rather than UK proceedings.

This Bill does not deal with beneficial ownership registers or the publication of any such register. This Bill will; however, provide that where a person is named by the United Nations or the United Kingdom (under a United Nations Security Council Resolution or the Sanctions and Anti-Money Laundering Act 2018), that person will also be considered sanctioned in the Island, and if they are subject to an asset freeze, their assets are to be frozen, which includes any company assets that are considered to be owned or controlled by that person under sanctions law.

With regards to the "UK blocking provision" this is further explained in Part 2.

Clauses 1 to 3 of the Bill will remain unchanged.

Sample of comments received to Part 1

"[We are] largely supportive of the proposed Bill but would like to use this opportunity to emphasize the need for the IOM to closely align to the UK regime in so far as is possible; any deviation from the UK approach will create significant operational implications and arguably open those institutions whom rely on outsourcing from UK systems and expertise to unnecessary risk, which would in turn impact the IOM as a jurisdiction."

"The spirit of the blocking provision, seeks to protect UK business from third country law - it is right to do so. That said, the first condition called out above, which makes it illegal for UK businesses to comply, may not consider all nuances and perhaps should set-out circumstances where compliance would not be considered illegal. By way of example, a UK business may have US persons and other US touchpoints strategically placed across its business, where all transactions may (or will) have US nexus, and those activities cannot be ring-fenced. As such there is a US nexus which cannot be disregarded and taking the decision not to transact with Iran and Cuba as matter of practice should not be considered illegal. Further, the ongoing challenges faced with third party providers, such as insurers, banks and other regulators, who themselves prohibit business with those countries owing to US sanctions or otherwise, might lead to situations where UK firms may wish to transact but cannot as such business will not be insured."

"Full law to conflict, freeze confiscate, name and shame individuals, shareholders, trustees, trust companies, solicitors, etc. whom facilitate these people and trust companies. Beneficial ownerships should be public. What are they hiding and why are we protecting them. Too much bending the laws to protect and facilitate under the name of financial / tax estate planning. Whom are the losers...government, law enforcement, general public"

Part 2 (Implementation of UK sanctions)

Clauses 4 to 6 of the Bill provide the main basis for the Bill.

Clause 4 of the Bill provides that the Treasury, by regulations, may give effect to a UK sanctions provision, either wholly or in part, or deal with any matters arising out of or related to such a provision.

Clause 5 of the Bill makes provision in relation to ships in Manx waters.

Clause 6 of the Bill provides that the Treasury may, by regulations, give effect to a UK blocking provision.

We asked:

1. Do you support clauses 4 to 6 of the Bill as currently drafted?
2. Please provide any further comments you have on clauses 4 to 6 of the Bill.

You said:

There were a total of 12 responses received to these questions. 41.7% of respondents were supportive of clauses 4 to 6 of the Bill as currently drafted. Of those who responded "I don't know", the majority were seeking further clarity of particular clauses.

Total response to question 3	12	Percentage
Yes	5	41.7%
No	3	25%
Don't know	4	33.3%

We did:

Following the feedback received, further clarity of what clauses 4 to 6 mean is provided below. Based on the feedback received, this part of the Bill will remain unchanged.

In relation to **clause 6** (implementation of UK blocking provision), the responses indicated that further guidance is needed in order for industry to understand what this means for their business. It is important to clarify that the UK blocking provisions specifically related to sanctions measures currently imposed by the USA on Iran and Cuba – they do not include other measures that are not related to sanctions. Ultimately it is a decision for the business whether or not to enter into any transactions, and this will depend on factors such as the AML/CFT risks, insurance and banking as well as legal obligations. Further guidance on how the UK blocking provisions apply in the UK can be found [here](#). The Treasury will issue further guidance when any Regulations made under this clause come into operation.

Feedback and further clarity on clauses:

Clause 4 (implementation of UK sanctions provisions) - there were some concerns raised about subsections (2)(b)(i) and (ii) which permit the Treasury to make "exceptions, adaptations and modifications to the UK sanctions provision" and provide that "any one or more of the Island, Jersey or Guernsey to are to be treated as if they formed part of the UK".

"Clause 4(2)(b)(ii) - It is not clear why this piece of legislation needs to make specific reference to Jersey and Guernsey."

"With specific regard to Clause 4, point two, [X] strongly objects and has significant concerns around the following wording, which indicates a departure from the UK approach: "to do so to such extent and subject to such exceptions, adaptations and modifications as may be specified in the regulations."

It is common in Manx legislation to find the phrase "subject to such exceptions, adaptations and modifications" especially where the legislation permits the application of UK legislation to the Island. For example, this can be found in section 19(1) of the [European Union and Trade Act 2019](#) which is the power currently used to apply the UK sanctions regimes to the Island. The modifications that the Treasury will make by regulations will correspond to those made under the sanctions regulations currently in place. The Treasury intends to keep the sanctions regulations as closely aligned to the UK provisions as possible, including the issuance of licences where appropriate.

With regard to the mention of Jersey and Guernsey, this clause will enable the Treasury to make modifications to treat any one of the Isle of Man, Jersey or Guernsey as part of the UK. For the purposes of sanctions measures, this power may be required to ensure the movement of certain goods between the Island, the UK and the Channel Islands is still permitted where goods are subject to trade restrictions (i.e. imports and exports). It is not intended that any provisions in Island law will extend to the Channel Islands.

Feedback and further clarity on clauses:

Clause 5 (power in relation to ships in Manx waters under UK sanctions provisions) - respondents questioned the use of UK enforcement agencies in Manx waters.

"Clause 5(4) - The proposed measures would see the Isle of Man ceding search powers to the United Kingdom. Whilst there are proposed powers for the Treasury to make regulations, it may be worth considering in this Bill, rather than regulations:

- *- Pre-emptive powers to prevent* and/or oversee searches performed by the United Kingdom in Isle of Man waters.*
** This means measures to prevent the abuse of powers ceded from the Isle of Man to the United Kingdom.*
- *Retrospective, annual reporting to the Council of Ministers or Tynwald on the search powers ceded from the Isle of Man to the United Kingdom to ensure there is appropriate political oversight.*
- *Clarification on the application of the law, where a United Kingdom vessel undertakes a search in Isle of Man territorial waters and then proceeds to move the searched vessel to a port or anchorage outside Isle of Man territorial waters (i.e. Would Isle of Man law still apply?)."*

To clarify, the Isle of Man will not be granting a blanket power to UK agencies in Manx waters. The power will permit UK agencies to exercise specific functions for the purposes of enforcing sanctions within Manx waters. The power can be made subject to conditions as contained in subsection (4). Operational arrangements to monitor the use of this power will be in place prior to any regulations coming in operation.

A further respondent asked:

"On clause 5 - should there not be similar provisions for aircraft in Manx airspace? Or is Manx airspace classed as part of UK airspace so is not relevant in the same way as Manx waters?"

There is not the same type of enforcement power for aircraft as there are for ships. However, there are powers which permit the UK Secretary of State to give directions to the Island's Air Traffic Control, the airport and Aircraft Registry. As the power only extends to giving directions, rather than actually operating in the territory of the Island, there is not the same requirement for enforcement powers as there are for the maritime enforcement.

Part 3 (Civil penalties)

The Bill will introduce new powers for the Treasury to impose civil penalties for offences in relation to financial sanctions, which it has not had before.

Clause 7 of the Bill provides a power for the Treasury to impose monetary penalties in cases where it is satisfied, on the balance of probabilities, that a person has breached a requirement or prohibition of any financial sanctions provision that has effect in the Island.

Clause 8 of the Bill sets out the procedures that the Treasury must follow when imposing a monetary penalty.

Clause 9 of the Bill deals with cases where financial sanctions have been breached by corporate bodies or unincorporated associations (a "body") and that breach is also attributable to an individual person (an "officer of a body").

Clause 10 of the Bill requires the Treasury to issue guidance as to the circumstances in which a monetary penalty may be issued, and how the amount of such as penalty might be determined.

We asked:

5. Do you support clauses 7 to 10 of the Bill as currently drafted?
6. Please provide any further comments you have on clauses 7 to 10 of the Bill.

You said:

There were a total of 12 responses received to these questions. 50% of respondents were supportive of clauses 7 to 10 of the Bill as currently drafted. Of those who responded "no" 3 provided comments.

Total response to question 5	12	Percentage
Yes	6	50%
No	5	41.7%
Don't know	1	8.3%

We did:

Following the feedback received, further clarity of what clauses 7 to 10 mean is provided below. Based on the feedback received, clause 7(6) of the Bill will be updated so that the definitions of "funds" and "economic resources" have the same meaning as they do in the Sanctions and Anti-Money Laundering Act 2018 (of Parliament). Clause 10 has been updated to make clear that reports will be published on a website or by any means the Treasury considers appropriate.

Feedback and clarity on clauses:

This Part will ensure that the Treasury has available to it the most appropriate methods of enforcing sanctions. Criminal penalties for contravention of sanctions prohibitions, restrictions and compliance obligations already exist for persons, including officers of a body (the maximum penalty is 7 years imprisonment, unlimited fine or both). This Part will permit civil penalties to be imposed where the extent and circumstances of a sanctions breach means it is not in the public interest to pursue a criminal prosecution and where the level of the breach or conduct of the individual or organisation is such that a mere warning letter is unlikely to bring about a sufficient change in behaviour.

Clause 7 (power to impose monetary penalties) – a respondent requested further clarity on the calculation of the penalty.

"Whilst the breach might be for a payment of \$50k but [the person] has economic resources of \$10bn, which is the amount being referred to?"

Subsection (4) will apply where there has been a breach of the financial sanctions provisions (such as making available funds to a sanctioned person), the breach can be attributed to particular funds or economic resources and it is possible to estimate the value of those assets.

For example, if funds of £50,000 are made available to a person subject to an asset freeze, it will be this amount that is used when determining the value of the penalty. In such case, the permitted maximum penalty will be the greater of £1,000,000 or £25,000. If it is not possible to estimate the value of assets relating to a breach, the permitted maximum penalty will be £1,000,000 as per subsection (5).

Feedback and clarity on clauses:

Clause 10 (monetary penalties: supplementary) – respondents commented on the issuance of guidance by the Treasury to set out how and when it will determine a monetary penalty imposed by clause 7.

"Clause 10(1) - This clause makes reference to the issuance of "guidance". The clause should make reference to "regulations" otherwise, there is insufficient political oversight by Tynwald. For comparability, please see the regime operated by the IOMFSA under the Financial Services Act 2008, specifically the Financial Services (Civil Penalties) Regulations 2015.

Clause 10(2) and 10(3) - Further clarity should be provided on the frequency of the reporting and to whom the reporting has been made. Preferably, there should be annual reporting to Tynwald."

"Regarding Clause 10(2) - FATF requirements are that enforcement actions should be persuasive and act as a deterrent. This clause as currently written is I believe too general and leads more to a statistical type report where details are anonymised.[...] In short, FATF likes to see "naming and shaming" policies with regards enforcement actions. To better prove the enforcement actions are effective to future international assessors I believe this clause would be better clearly laying out a name and shame reporting procedure to be used when the Treasury feels appropriate."

The Treasury intention is for the guidance which must be issued under subsection (1) to correspond to the [guidance](#) published by the UK Office of Financial Sanctions Implementation ("OFSI"). Clause 10 is based on section 149 of the [Policing and Crime Act 2017](#) (of UK Parliament), and the Treasury considers that this does provide sufficient Tynwald oversight. The guidance will set out –

- (i) the compliance and enforcement approach that the Treasury will take
- (ii) an overview of how the Treasury will assess whether to apply a monetary penalty and what will be taken into account
- (iii) an overview of the process that will determine the level of monetary penalty
- (iv) how the Treasury will impose a monetary penalty, including timescales at each stage and the rights of review and appeal.

In relation to subsections (2) and (3), the Treasury intends to publicly issue reports regarding the imposition of any monetary penalties similar to how OFSI issue its [penalty reports](#), i.e. on a case by case basis via its website. Each report names the person or entity involved, the amount of the penalty (if any), the provisions deemed to have been breached and the details of the case.

Part 4 (Miscellaneous)

This Part includes miscellaneous provisions.

Clause 11 of the Bill provides that the Treasury may, by regulations, make any supplemental, incidental, consequential, transitional or saving provisions as it considers necessary for the purposes of the regulations.

Clause 12 of the Bill clarifies that nothing in this Bill or in regulations made under it authorises a disclosure in contravention of applicable data protection legislation in the Island.

Clause 13 of the Bill ensures that a person, who may have been liable to civil proceedings as a result of complying with any regulations made under this Bill, is not liable if they reasonably believe that they were acting in compliance with regulations in place at the time.

Clause 14 provides that sanctions regulations and regulations under clause 4 may make provision binding the Crown, although they may not make the Crown criminally liable.

We asked:

5. Do you support clauses 11 to 14 of the Bill as currently drafted?
6. Please provide any further comments you have on clauses 11 to 14 of the Bill.

You said:

Total response to question 5	12	Percentage
Yes	9	75%
No	2	16.7%
Don't know	1	8.3%

We did:

As a result of the feedback received, no changes to these clauses will be made.

Part 5 (Amendments)

Clause 15 of the Bill consequentially amends the Customs and Excise Management Act 1986 in order to update the definition of “assigned matter”, which sets out the duties of the Customs and Excise Division. This ensures that references to sanctions matters will be those under the Sanctions Bill (once it becomes an Act of Tynwald).

This Clause and the Schedule amend the Terrorism and Other Crime (Financial Restrictions) Act 2014 (“TOCFRA”). The amendments bring certain provisions of TOCFRA closer in line with the current sanctions regimes which have effect in the Island, and which will be given effect under this Bill.

We asked:

9. Do you support clause 15 (and the Schedule) of the Bill as currently drafted?
10. Please provide any further comments you have on clause 15 (and the Schedule) of the Bill.

You said:

Total response to question 5	12	Percentage
Yes	9	75%
No	2	16.7%
Don't know	1	8.3%

We did:

As a result of the feedback received, no changes to these clauses will be made.

However, one amendment to the Schedule to the Bill will be made to add a new section 52A, which will ensure that a person, who may have been liable to civil proceedings as a result of complying with sections 44 to 49 (asset freeze requirements), will not be liable if they reasonably believe that they were acting in compliance with such sections in place at the time. This new section is the equivalent of clause 13 of the Bill, and is a requirement within recommendations 6 and 7 of the Financial Action Task Force (the international standards for Anti-Money Laundering and Countering Terrorist Financing).

Next Steps

The Treasury will take the next steps to introduce the Sanctions Bill 2023 into the branches of Tynwald during the 2022-23 parliamentary year.

Secondary legislation will be made as soon as possible after the Act comes into operation.

Related mandatory guidance will be published once the Act comes into operation.