

**Consultation on  
Customs and Excise Bill 2017**

Views are sought on the amendments made to existing customs and excise legislation, namely the Customs and Excise Management Act 1986 and the Customs and Excise Act 1993, and to the Terrorism and Other Crime (Financial Restrictions) Act 2014 in respect of UN and EU sanctions

Consultation Period: 7 February 2017 to 24 March 2017

Issued by:

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This consultation paper sets out the Isle of Man Government's proposals to introduce a new Bill which would make various amendments to the existing law governing the work of the Customs and Excise Division of the Treasury.

The Treasury would be grateful for any comments on the proposed Bill as detailed in this consultation paper (preferably by email) to:

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This consultation will close at 5.00 pm on 24 March 2017.

## **Introduction**

The Customs and Excise Division of the Treasury undertakes a wide range of functions – matters delegated to it by the Treasury, agency functions on behalf of other Departments, as well as a variety of other roles connected to the protection of the Island, its revenues, people and environment.

A list of the matters for which the Division has responsibility can be found in [Notice 1003 MAN](#). One of the main pieces of legislation used by the Treasury to ensure that the law and procedures available to the Customs and Excise Division meet the requirements of its many functions is the Customs and Excise Act 1993 ("the 1993 Act"). This Act is mainly used to apply in Island law items of UK legislation necessary to ensure compliance with the requirements of the [Customs and Excise Agreement](#) with the UK.

It has become clear in recent months that there is a risk that the current structure of the 1993 Act is becoming inadequate, or is likely to become inadequate, in providing the necessary scope and flexibility to respond to changes taking place, or likely to take place, in the UK, the EU or internationally.

In addition, there is also the risk that new or changing roles undertaken by the Customs and Excise Division may not be properly or fully catered for, in terms of being able to call on the necessary powers to apply, amend or adapt legislation to cope with a constantly changing international scene.

It is therefore proposed to "future proof" the 1993 Act, to make it better able to cope with anticipated and potential developments.

The Bill also makes a number of amendments to the Customs and Excise Management Act 1986 ("CEMA 1986") and the Terrorism and Other Crime (Financial Restrictions) Act 2014 in the light of the National Risk Assessment ("NRA") completed in 2015 and the subsequent evaluation of the Island's anti-money laundering, terrorist financing and associated controls during 2016.

## **Contents of the draft Bill**

Part 1 of the Bill contains standard clauses dealing with its title, commencement and expiry after it has made the amendments to other, existing legislation.

Part 2 contains amendments to the 1993 Act.

Part 3 contains amendments to CEMA 1986. This Act is the chief source of powers relating to customs matters, and the changes to be made affect Part VA of the Act (which is concerned with the requirements to declare large amounts of cash entering or leaving the Island) and sections 174B and 174D (which are concerned with the ability of the Customs and Excise Division to co-operate with other agencies).

Part 4 contains an amendment to the Terrorism and Other Crime (Financial Restrictions) Act 2014 that will enable the Financial Intelligence Unit to receive, deal with and follow-up reports concerned with matters relating to UN or EU sanctions in the same way as it handles suspicious activity reports involving money laundering or terrorist financing.

## **Part 2 of the Bill**

Clause 4 of the Bill amends section 1 of the 1993 Act to make explicit reference to the Export Control Act 2002 (of Parliament) and to the phrase "placing on the market".

The Customs and Excise Agreement 1979 requires that the Island maintain its laws and procedures in relation to export control so that they correspond to those in force in the United Kingdom.

However, recent years have seen an extension of export control law as a consequence of new or enhanced international agreements or in an effort to prevent unscrupulous businesses from being involved in trade that not only causes death and injury abroad, but also fuels conflicts and can damage the reputation of the UK and Isle of Man. The most obvious example of the changes has been the introduction of "trade controls" – restrictions including licensing requirements relating to the movement of certain goods between other countries (commonly referred to as "trafficking and brokering"). The goods affected include most military and paramilitary equipment and that which can be used for internal repression or torture.

More information on export control requirements in general can be found in [Notice 279 MAN](#), and on trade controls in particular in [Notice 279T MAN](#).

The amendments made to section 1 of the 1993 Act clarify that any statutory instrument made under the Export Control Act 2002 may be applied in the Island using the 1993 Act, and ensures that the section is better capable of dealing with future developments.

Clauses 4 and 5 also provide for orders to be made that involve powers to restrict or prohibit the "placing on the market" of specified goods. This is a term now commonly used in both UK and EU legislation either separately from, or in addition to, "import" or "importation". So, for example, domestic UK legislation enforcing a ban on the sale of snus (a form of oral snuff) would refer to a prohibition on its being placed on the

market rather than on its importation. The net effect, to prevent it being sold in the country, is the same.

The amendments may by clauses 4 and 5 ensure that the Island can apply or adopt suitable import and export restrictions and prohibitions to provide not only protection to Island consumers, business and the environment, but also to prevent the Island being used as a "back door" or conduit to place on the UK or EU markets goods that would otherwise be prohibited.

Clause 6 replaces subsection (3) of section 3 of the 1993 Act. The changes contained in the new subsection reinstate the power to make essential orders giving effect to the Customs and Excise Agreement 1979, such as in providing for mutual assistance in matters covered by that Agreement between the Treasury and the relevant body in the UK. The chief order dealing with the detail of co-operation under the Agreement dates from 1980 and was made under the Customs and Excise (Transfer of Functions) Act 1979, an Act which was subsequently repealed by the 1993 Act. The substituted subsection will permit the amendment or replacement of the 1980 Order to allow, for example, the recognition that many "customs" functions originally undertaken by HM Customs and Excise in 1979 are now dealt with by other bodies, such as Border Force and the National Crime Agency, instead of, or in addition to HM Revenue and Customs.

### **Part 3 of the Bill**

Part 3 of the Bill makes amendments to two areas of CEMA 1986.

Clause 7 inserts a new section 76J into Part VA of CEMA 1986. Part VA is concerned with the requirement to declare or disclose sums of cash over €10,000 which are sent to, or brought into, the Island or sent or taken out of the Island.

During the NRA process in 2014-15, the Customs and Excise Division undertook a review of the requirements and functions, and conducted an outreach exercise involving companies and individuals involved in the movement of people and goods into and out of the Island. One result of this was a change in the definition of "cash" to encompass such things as stored-value cards.

However, despite the steps already taken the Moneyval evaluation team in 2016 highlighted that there was no formal requirement in the law that meant that the Treasury must maintain records of any declarations and disclosures made, or non-declarations, false declarations, seizures of cash etc). These records were, of course, being kept. Nonetheless, to demonstrate both the fact that the Island was taking on board the recommendation of the evaluation, and for purposes of transparency, clause 7 will require the Treasury to –

- a. keep such records as it thinks fit of any declaration or disclosure and any seizure of cash made pursuant to the cash declaration/disclosure regime; and
- b. to submit an annual report to Tynwald summarising the information kept in such records.

More information on the cash declaration/disclosure regime may be found in [Notice 9011 MAN](#).

Clause 8 amends section 174B of CEMA 1986, which deals with the disclosure by the Customs and Excise Division of information and documents. Essentially the section provides that such disclosure may be made to a duly designated "enforcing authority" in the Island (which includes the Police, Financial Supervision Authority and the Gambling Supervision Commission), the British Security Services and to any person for the purposes of a criminal investigation or criminal proceedings.

The amendment being made is in recognition of the fact that many enforcement agencies now use civil investigation penalties instead of, or as an alternative to, criminal ones. This is seen not only in the USA (by the Securities and Exchange Commission and the Office of Foreign Asset Control, for example), but now in the UK by such bodies as the Office of Financial Sanctions Implementation (a part of HM Treasury).

The amendment contained in clause 8 provides the Treasury with the discretion to make a disclosure where it thinks this is appropriate. Furthermore, whilst not a formal requirement following the Moneyval evaluation, it is likely to greatly assist in any future assessment of the capabilities of the Island's law enforcement and regulatory functions.

Clause 9 amends section 174D of CEMA 1986 to insert a definition of a "civil penalty" for the purposes of the changes made to section 174B.

#### **Part 4 of the Bill**

Clause 10 of the Bill amends section 63 of the Terrorism and Other Crime (Financial Restrictions) Act 2014 by changing only one word. The word "and" is replaced by "or". As a result, the Treasury will be able to delegate its functions in respect of the requirement for persons to submit reports of irregularities and other matters involving UN or EU sanctions to an organisation concerned with the prevention *or* investigation of money laundering and terrorist financing.

Following the NRA and Moneyval evaluation, and the establishment of the Financial Intelligence Unit (FIU) in 2016, it was decided to improve how sanctions-related reports were handled by making the new FIU the prime agency to which reports of suspicions and concerns were made. Hence these could be dealt with as if a suspicious activity report for any other form of "financial crime", and provide the FIU with an improved overall picture of the threats and developments affecting the business community.

However, it was found that the wording of the existing section 63, under which such delegations could be made, only allowed this where the organisation concerned was responsible for *both* prevention and investigation – whereas the FIU is only responsible for the former. Clause 10 makes the very minor amendment to correct this, and permit the delegation to go ahead as planned.

The Customs and Excise Division of the Treasury remains the lead agency in sanctions matters (trade as well as financial sanctions – though the Police would be the lead agency in any matter involving suspected terrorism or terrorist financing offences), and will continue to deal with other aspects of sanctions work, such as providing information and assistance. It will also be the body responsible for any investigation of suspected irregularities.

## Next steps

After publishing this consultation paper Treasury will –

- publish a summary of matters raised in the consultation with responses where appropriate; and
- work with those affected, after the formal deadline has passed, in order to further inform its work, as appropriate.

If you have any views or observations or there is some point of clarification you would like to receive, you are invited to respond either by writing to –

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or by emailing [customs@gov.im](mailto:customs@gov.im)

The closing date for the receipt of comments is **5 pm on 24 March 2017**.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group it would be helpful to make your position clear. To ensure that the process is open and honest, responses can only be accepted if you provide your name with your response.

The purpose of the consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

## Consultation criteria

The Six Consultation Criteria –

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment as appropriate.



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**Annex – Customs and Excise Bill 2017**

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**CUSTOMS AND EXCISE BILL 2016**

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**Explanatory Memorandum**

1. This Bill is promoted by Mr. Cannan on behalf of the Treasury.
2. The Bill amends the *Customs and Excise Act 1993*, the *Customs and Excise Management Act 1986* and the *Terrorism and Other Crime (Financial Restrictions) Act 2014*.
3. *Clauses 1 and 2* deal with citation and commencement of the resulting Act.
4. *Clause 3* provides for the expiry of the resulting Act after it is fully in operation.
5. *Clause 4* amends section 1 of the *Customs and Excise Act 1993* to add the Export Control Act 2002 (an Act of Parliament) to the list of instruments which the Treasury may apply to the Island by order (subject to any necessary exceptions adaptations and modifications). The provision further amends subsection (3) of that section by adding the words “placing on the market” to paragraphs (db) and (g). The effect of these amendments is to clarify the fact that an order under the Act may apply to the Island an enactment of Parliament or a European instrument which restricts the placing on the market of goods in addition to one relating to the restriction of buying and selling of goods. Finally, the clause inserts a provision which states that any reference to an instrument in subsection (3)(g) is to be treated as a reference to that instrument as amended, extended or applied by any other instrument.
6. *Clause 5* amends section 2(b) of the *Customs and Excise Act 1993*. The amendment is made for the sake of consistency with the amendment made by *Clause 4* and permits the Treasury to make orders imposing or varying any restriction on the placing of goods on the market in the Island in ways which correspond to provisions in relation to the import or export of goods which are in force in the United Kingdom.
7. *Clause 6* amends section 3 of the *Customs and Excise Act 1993* to clarify the types of provision that may be made by means of public document for the purposes of giving effect to the Customs and Excise Agreement 1979 (the customs agreement between the United Kingdom and the Island). An order may, inter alia, confer power upon the Treasury to make disclosure of information to any person mentioned in the order; make provision in relation

to the recovery of any duty, fine or other sum payable by any person in consequence of the agreement; create offences in connection with the agreement; make provision about what constitutes evidence in relation to proceedings brought for the recovery of monies under the agreement; make provision in relation to the obtaining of statistical information for the purposes of the agreement; make provision in relation to any matter the Treasury thinks requisite for the operation of the arrangements put in place by the agreement. In addition an order may provide for the laying of the report mentioned in section 2(5) of the Isle of Man Act 1979 (an Act of Parliament) before Tynwald. It also makes a presentational change to subsection (4) of section 3.

8. *Clause 7* inserts a new section 76J into the *Customs and Excise Management Act 1986*. This provision requires the Treasury to record any particulars it thinks fit in relation to declarations and disclosures of cash made generally under Part VA and seizures of cash effected under section 76G(2) of the *Customs and Excise Management Act 1986* and to prepare a report summarising this information which must be laid before Tynwald. Part VA of the Act (inter alia) contains provisions which require persons entering or leaving the Island and carrying cash or sending cash by post with a value in excess of an amount of 10,000 Euro or such other amount as is prescribed by order to declare the value of the cash to an officer (section 76C) and to disclose the value of any cash carried on their persons. Section 76G confers powers upon an officer to seize cash where: the value is in excess of the amounts mentioned above; a person has refused to make a declaration or disclosure; an officer reasonably suspects that a declaration or disclosure is untrue in a material particular; evidence has been required to be provided in support of information provided under Part VA and has not been provided or does not support the information or where an officer reasonably suspects that any cash being imported or exported has been obtained through unlawful conduct or is intended to be used for money laundering or other activities associated with terrorism.
9. *Clauses 8* and *9* are connected. Section 174B of the *Customs and Excise Management Act 1986* provides for the Treasury, the Collector of Customs and Excise or an officer of the customs and excise to be able to disclose information and documents held by them in relation to assigned matters without breaching any obligation of secrecy where the disclosure is for the purposes of a criminal investigation, criminal proceedings, to enable an enforcing authority to discharge its functions or for the purposes of British intelligence. *Clause 8* augments the list of permitted purposes set out in subsection (2) of section 174B by including references to investigations to determine whether to impose civil penalties and proceedings in order to impose civil penalties in addition to the current permissions.

10. *Clause 9* amends section 174D of the *Customs and Excise Management Act 1986* for the purpose of inserting a definition of “civil penalty” into the section (which contains a list of definitions for terms used in sections 174B and 174C). The definition of “civil penalty” is a broad one and encompasses any penalty liability to which arises otherwise than in consequence of a person’s conviction for a criminal offence.
11. *Clause 10* amends section 63 of the *Terrorism and Other Crime (Financial Restrictions) Act 2014* by substituting the word “and” for “or” in subsection (1). The effect of this change is to permit the Treasury by order to delegate its functions (other than a power to make orders) to any organisation in the Island which is responsible either for the prevention of or the investigation into financial crime and the financing of terrorism rather than requiring the proposed delegate to have both these functions before any delegation may be made.
12. The Bill is expected to be revenue neutral and is not expected to incur additional costs to Government. The Bill is designed to enable existing human resources to continue to be deployed in the most efficient and effective roles.
13. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



## CUSTOMS AND EXCISE BILL 2016

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## CUSTOMS AND EXCISE BILL 2016

A BILL TO PROVIDE FOR THE APPLICATION IN THE ISLAND OF LEGISLATION CONCERNED WITH CUSTOMS AND EXCISE, VALUE ADDED TAX AND IMPORT, EXPORT AND TRADE CONTROLS; TO REQUIRE THE MAINTENANCE OF RECORDS IN RELATION TO SEIZURES OF CASH AND ENFORCEMENT OF PART VA OF THE CUSTOMS AND EXCISE MANAGEMENT ACT 1986; TO AMEND THAT ACT TO PROVIDE FOR DISCLOSURE OF INFORMATION BY THE TREASURY IN FURTHER CASES; TO AMEND THE TERRORISM AND OTHER CRIME (FINANCIAL RESTRICTIONS) ACT 2014 IN ORDER TO ALLOW DELEGATION OF TREASURY FUNCTIONS IN ADDITIONAL CASES; AND FOR CONNECTED PURPOSES.

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1 – INTRODUCTORY

#### 1 Short title

The short title of this Act is the Customs and Excise Act 2016.

#### 2 Commencement

- (1) This Act (other than sections 1 and 3 and this section) comes into operation on a day appointed by order of the Treasury.
- (2) Different days may be appointed for different provisions and different purposes.
- (3) An order under subsection (1) may make such transitional and saving provisions as the Treasury considers necessary or expedient.

### 3 Expiry

- (1) This Act expires —
  - (a) on the day after its promulgation, if all of its provisions are in operation on its promulgation; or
  - (b) otherwise, on the day after the last provision is brought into operation.
- (2) The expiry does not —
  - (a) affect the continuing operation of the amendments made by this Act; or
  - (b) revive any provision not in operation when the amendments took effect.

## PART 2 - AMENDMENTS TO THE CUSTOMS AND EXCISE ACT 1993

### 4 Further powers to give effect to the Customs and Excise Agreement 1979: section 1 of the Customs and Excise Act 1993 amended

- (1) Section 1 of the *Customs and Excise Act 1993* (application to the Island of certain enactments relating to customs and excise etc.) is amended as follows.
- (2) In subsection (3) —
  - (a) after paragraph (a) insert —
 

(aa) the Export Control Act 2002 (an Act of Parliament);
--
  - (b) in paragraph (b) for “paragraph (a)” substitute paragraphs (a) or (aa);
  - (c) in paragraph (db) for the words “buying or selling” substitute buying, selling or placing on the market;
  - (d) in paragraph (g) for the words “buying and selling” substitute buying, selling or placing on the market.
- (3) At the end insert —
 

(5) Any reference to an instrument in subsection (3)(g) is to be treated as a reference to that instrument as amended, extended or applied by any other instrument.
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**5 Power of Treasury to make orders as to Customs and Excise: section 2(b) of the Customs and Excise Act 1993 amended**

In section 2(b) of the *Customs and Excise Act 1993* (power of Treasury to make orders as to customs and excise) at the end insert —

☐☐(iii) the placing of goods on the market in the Island;☐☐.

**6 Public documents: section 3 of the Customs and Excise Act 1993 amended**

(1) Section 3 of the *Customs and Excise Act 1993* (public documents) is amended as follows.

(2) For subsection (3) substitute —

☐☐(3) The power to make an order under section 1 or 2 may be exercised in such manner as the Treasury considers necessary or expedient to give full effect to the provisions of the Customs and Excise Agreement 1979 which was signed on behalf of the Governments of the Isle of Man and of the United Kingdom on 15<sup>th</sup> October 1979 (or any replacement of that agreement); and an order made for these purposes may in addition make provision —

- (a) for the disclosure by the Treasury of information to any person mentioned in the order;
- (b) in relation to the recovery of any duty, fine or other sum payable by any person in consequence of the agreement;
- (c) in relation to the creation of offences in connection with matters related to the agreement;
- (d) about what constitutes evidence in relation to any proceedings brought by virtue of paragraph (b);
- (e) in relation to the obtaining of statistical information for the purposes of the agreement;
- (f) about the laying of the report mentioned in section 2(5) of the Isle of Man Act 1979 (an Act of Parliament) before Tynwald;
- (g) in relation to any matter the Treasury thinks requisite for the operation of the arrangements put in place by the agreement.☐☐.

(3) In subsection (4) for “the legislation” substitute ☐☐any legislation☐☐.

### PART 3 - AMENDMENT TO THE CUSTOMS AND EXCISE MANAGEMENT ACT 1986

#### 7 Record of cash declarations etc.: section 76J inserted into the Customs and Excise Management Act 1986

After section 76I of the *Customs and Excise Management Act 1986* (no excuse from complying with a requirement under Part VA) insert —

##### **76J Requirement to maintain records of cash declarations etc.**

The Treasury must record such particulars as it thinks fit in relation to —

- (a) any declaration or disclosure; and
- (b) any seizure of cash under section 76G(2),

and the Treasury must prepare an annual report to be laid before Tynwald summarising, in relation to the financial year to which the report relates, the information specified in paragraphs (a) and (b).<sup>22</sup>

#### 8 Disclosure of information by customs service: section 174B of the Customs and Excise Management Act 1986 amended

- (1) Section 174B of the *Customs and Excise Management Act 1986* (disclosure of information by customs service) is amended as follows.
- (2) In subsection (2) —
  - (a) in paragraph (a) after “criminal investigation whatever” insert **or investigation to determine whether to impose a civil penalty**;
  - (b) in paragraph (b) after “criminal proceedings whatever” insert **or proceedings for the purpose of imposing a civil penalty**.

#### 9 Ancillary: section 174D of the Customs and Excise Management Act 1986 amended

- (1) Section 174D of the *Customs and Excise Management Act 1986* (matters supplementary to ss 174B and 174C) is amended as follows.
- (2) After “174C —” insert —
 

**“civil penalty” means any penalty liability to which arises otherwise than in consequence of a person’s conviction for a criminal offence;**



**PART 4 – AMENDMENT TO THE TERRORISM AND OTHER  
CRIME (FINANCIAL RESTRICTIONS) ACT 2014**

**10 Delegation: section 63 of the Terrorism and Other Crime (Financial  
Restrictions) Act 2014 amended**

In section 63(1) of the *Terrorism and Other Crime (Financial Restrictions) Act 2014 (Delegation of Treasury functions)* for the words “and investigation” substitute **or** investigation **or**.