



## **CUSTOMS AND EXCISE BILL 2017**

# **EXPLANATORY NOTES**

## **Notes on Clauses**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr Ralph Peake MHK*

### **PART 1**

### **EXPLANATORY NOTES**

#### **GENERAL NOTE**

This Bill, which is promoted by the Treasury is intended to amend three Acts of Tynwald.

It amends the Customs and Excise Act 1993 to update the powers contained in that Act to –

- a. apply necessary United Kingdom or European Union legislation for the purposes of complying with the terms of the Customs and Excise Agreement 1979 with the UK;
- b. allow co-operation with agencies in the UK other than HM Revenue and Customs that have responsibility for customs matters; and
- c. to deal with the laying before Tynwald of the report and account prepared by the National Audit Office regarding the local collection of common duties and shared revenue under the Agreement.

The Bill also amends the Customs and Excise Management Act 1986 to impose a formal requirement for the Treasury to maintain a record of declarations, disclosures and seizures of cash under Part VA of that Act, and to submit an annual report to Tynwald on such matters. Other amendments permit the disclosure of information and documents by Customs and Excise to outside agencies where civil investigations or civil penalties are involved.

Finally, the Bill amends section 63 of the Terrorism and Other Crime (Financial Restrictions) Act 2014 so that the Financial Intelligence Unit will be able to deal with United Nations and European Union sanctions reports from businesses in the same way as it does suspicious activity reports of money laundering.

## **STRUCTURE OF THE BILL**

The Bill is structured as follows –

**Part 1** is concerned with the short title of the Bill, commencement and expiry.

**Part 2** contains amendments to the Customs and Excise Act 1993.

**Part 3** contains amendments to the Customs and Excise Management Act 1986.

**Part 4** contains the amendment to section 63 of the Terrorism and Other Crime (Financial Restrictions) Act 2014.

## **CLAUSE BY CLAUSE NOTES**

### **PART 1**

#### **INTRODUCTORY**

##### **Clause 1 – Short title**

This contains the short title of the Bill.

##### **Clause 2 - Commencement**

This deals with when the elements of the Bill shall come into operation. The Bill will come into operation upon Royal Assent, but its various provisions are to be brought into operation by order or orders, and different provisions may be brought into operation at different times. The order or orders can also contain any savings or transitional measures that are considered necessary.

##### **Clause 3 – Expiry**

This provides that the Bill will expire on the day after its promulgation on Tynwald Day, if all of its provisions are by then in operation, or otherwise on the day after the last provision is brought into operation. Such expiry will not affect the continuing operation of amendments made by the Bill, nor revive any provision not in operation when those amendments take effect.

**PART 2**  
**AMENDMENTS TO THE CUSTOMS AND EXCISE ACT 1993**

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

This clause amends section 1 of the Customs and Excise Act 1993, which is concerned with the application in Island law of certain enactments relating to customs and excise etc. and -

- a. inserts reference to the Export Control Act 2002 (of Parliament) into subsection (3), and makes a necessary consequential amendment;
- b. replaces references in two paragraphs to “buying and selling” with “buying, selling or placing on the market”; and
- c. adds a new subsection (5).

Subsection (3) lists the types of enactment which section 1 may be used to apply in Island law, and adding reference to the Export Control Act 2002 removes any doubt that all export licensing, export control and trade control and licensing measures made by or under that Act in the UK may be applied in Island law.

The references to “placing on the market” ensure that controls in UK or EU legislation that employ that term (as opposed to references to importation) may be applied in Island law when required.

The new subsection (5) added to section 1 ensures that any reference to an EU instrument to which subsection (3)(g) applies refers to that instrument as it is amended from time to time or is applied by another instrument.

**Clause 5 - Power of Treasury to make orders as to Customs and Excise: section 2(b) of the Customs and Excise Act 1993 amended**

Section 2 of the Customs and Excise Act 1993 provides that the Treasury may make orders that are concerned with the imposition, amendment or repeal of any customs or excise duty or VAT, or to impose or vary a restriction on the import, export or removal to or from the Island of goods so as to have in place provisions corresponding to those in force in the UK.

This clause inserts a new sub-paragraph (iii) into paragraph (b), which means that the Treasury will also be able to, by order, impose or vary a restriction concerned with the placing of goods on the market in the Island.

As with the amendments to section 1, a reference to “placing on the market” reflects the fact that what might be seen as “import” restrictions are sometimes described in UK or EU legislation as prohibitions or restrictions on placing on the market certain goods.

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

This clause amends section 3 of the Customs and Excise Act 1993 to –

- a. replace subsection (3); and
- b. make a minor amendment to subsection (4).

The new subsection (3) clarifies the types of provision that an order may contain for the purposes of giving effect to the Customs and Excise Agreement 1979 (“the Agreement”). The principal order used to implement the Agreement in the Island dates from 1980 and was originally made using powers contained in a 1979 Act that was subsequently repealed (by the Customs and Excise Act 1993).

The new subsection (3) contains a comprehensive list of the matters that may need to be covered by an order made under section 1 or 2 and to allow compliance with the terms of the Agreement, including mutual assistance with agencies in the UK which perform functions originally undertaken by HM Customs and Excise (but now performed by HMRC, Border Force and the National Crime Agency). It also makes reference to the laying before Tynwald of the annual report produced by the National Audit Office on the local collection and administration of common duties and revenues shared under the terms of the Agreement.

Subsection (4) requires an application order to have annexed to it the text of the applied UK or EU instrument, as amended by the order. Reference to “the legislation” in the subsection is replaced by a reference to “any legislation” applied by the order.

**PART 3**

**AMENDMENT TO THE CUSTOMS AND EXCISE MANAGEMENT ACT 1986**

**Clause 7 - Record of cash declarations etc.; section 76J inserted into the Customs and Excise Management Act 1986**

This clause inserts a new section 76J into Part VA of the Customs and Excise Management Act 1986.

The new section requires that the Treasury maintain records of cash declarations and disclosures, and any seizure of cash, under the cash declaration regime imposed by Part VA.

It also requires the Treasury to lay before Tynwald an annual report summarising the information contained in the records.

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

Section 174B of the Customs and Excise Management Act 1986 deals with disclosures of information and documents by the Customs and Excise Division of the Treasury to other persons and organisations. Subsection (2) deals with the purposes for which such a disclosure can be made – which in broad terms can be described as criminal investigations, criminal proceedings, to assist the functions of “enforcing authorities” and the British security services,

This clause amends subsection (2) of to –

- a. insert a reference to an investigation the purpose of which is to determine whether or not to impose a civil penalty; and
- b. insert a reference to proceedings for the purpose of imposing a civil penalty.

The effect of the amendments is to –

- a. extend the discretion of the Treasury so as to be able to disclose information and documents to bodies relating to a civil investigation, in the same way as the Treasury is able to disclose information or documents where a criminal investigation is or may be underway; and
- b. similarly, provide Treasury with the discretion to disclose information or documents for the purposes of any proceedings that may result in the imposition of a civil penalty.

The amendments will enable the Customs and Excise Division to treat civil investigations and proceedings involving civil penalties for serious wrongdoing in the same way as is currently the case for criminal investigations and criminal proceedings.

The term “civil penalty” is defined in the following clause 9.

**Clause 9 - Ancillary: section 174D of the Customs and Excise Management Act 1986 amended**

This clause amends section 174D of the Customs and Excise Management Act 1986 to insert a new definition for a civil penalty. The new definition is necessary because of the amendments made to section 174B by clause 8. A civil penalty is defined as being any penalty liability to which arises otherwise than in connection of a person’s conviction for a criminal offence.

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

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

This clause amends subsection (1) of section 63 to replace the words “and investigation” with “or investigation”, so that section 63 will permit the Treasury to delegate its functions under the Act to a body responsible for the prevention of, or investigation into, financial crime or terrorist financing.

The previous wording prevented the Treasury delegating any of its functions relating to UN and EU terrorism financing sanctions to the FIU, because the FIU does not have an investigation function.