



Isle of Man

Ellan Vannin

CUSTOMS AND EXCISE BILL 2017

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Explanatory Memorandum

1. This Bill is promoted by Mr. Peake 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 amendments 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 a 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 “or” for “and” 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 resulting Act 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*.



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CUSTOMS AND EXCISE BILL 2017

- 1 **A BILL** to provide for the application in the Island of legislation concerned with
 2 customs and excise, value added tax and import, export and trade controls; to
 3 require the maintenance of records in relation to seizures of cash and
 4 enforcement of Part VA of the Customs and Excise Management Act 1986; to
 5 amend that Act to provide for disclosure of information by the Treasury in
 6 further cases; to amend the Terrorism and Other Crime (Financial Restrictions)
 7 Act 2014 in order to allow delegation of Treasury functions in additional cases;
 8 and for connected purposes.

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:—

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PART 1 – INTRODUCTORY

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1 Short title

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The short title of this Act is the Customs and Excise Act 2017.

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2 Commencement

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(1) This Act (other than sections 1 and 3 and this section) comes into operation on a day appointed by order of the Treasury.

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(2) Different days may be appointed for different provisions and different purposes.

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(3) An order under subsection (1) may make such transitional and saving provisions as the Treasury considers necessary or expedient.

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3 Expiry

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(1) This Act expires —

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(a) on the day after its promulgation if all of its provisions are in operation on its promulgation; or

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(b) otherwise, on the day after the last provision is brought into operation.

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- (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 “paragraph (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)(v) 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.”.

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 —

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“(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 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”.

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PART 3 – AMENDMENT TO THE CUSTOMS AND EXCISE MANAGEMENT ACT 1986

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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) and immediately before the heading to Part VI (customs and excise control: supplementary provisions) insert —

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“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),

1 and the Treasury must prepare an annual report to be laid before
2 Tynwald summarising, in relation to the financial year to which the
3 report relates, the information specified in paragraphs (a) and (b).”.

4 **8 Disclosure of information by customs service: section 174B of the**
5 **Customs and Excise Management Act 1986 amended**

6 (1) Section 174B of the *Customs and Excise Management Act 1986* (disclosure of
7 information by customs service) is amended as follows.

8 (2) In subsection (2) —

9 (a) in paragraph (a) after “criminal investigation whatever” insert “or
10 investigation to determine whether to impose a civil penalty”;

11 (b) in paragraph (b) after “criminal proceedings whatever” insert “or
12 proceedings for the purpose of imposing a civil penalty”.

13 **9 Ancillary: section 174D of the Customs and Excise Management Act**
14 **1986 amended**

15 (1) Section 174D of the *Customs and Excise Management Act 1986* (matters
16 supplementary to ss 174B and 174C) is amended as follows.

17 (2) After “174C —” insert —

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

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

23 **10 Delegation: section 63 of the Terrorism and Other Crime (Financial**
24 **Restrictions) Act 2014 amended**

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

IN THE KEYS

CUSTOMS AND EXCISE BILL 2017

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.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR PEAKE

MAY 2017

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