

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,752 of 24th December, 2009

B. 42/09

COUNTER-TERRORISM ACT 2009

Arrangement of Clauses

1. Title and commencement.
2. Interpretation.

Conditions for giving a direction

3. Conditions for giving a direction.
4. Persons to whom a direction may be given.
5. Persons operating in the financial sector.
6. Meaning of “credit or financial institution”.
7. Exceptions.

Requirements that may be imposed by a direction

8. Requirements that may be imposed by a direction.
9. Customer due diligence.
10. Enhanced ongoing monitoring.
11. Systematic reporting.
12. Limiting or ceasing business.

Procedural provisions and licensing

13. Publication and duration of directions.
14. Directions limiting or ceasing business: exemption by licence.

Enforcement

15. Enforcement officers.
16. Power to require information or documents.
17. Entry, inspection without a warrant etc.
18. Entry to premises under warrant.
19. Restrictions on powers.
20. Failure to comply with information requirement.

21. Power to impose civil penalties.
22. Imposition of penalty by enforcement authority: procedure.
23. Appeal against imposition of civil penalty.
24. Payment and recovery of civil penalties.

Offences

25. Offences: failure to comply with requirement imposed by direction.
26. Offences in connection with licences.
27. Extra-territorial application of offences.
28. Prosecution of offences.
29. Jurisdiction to try offences.
30. Liability of officers of bodies corporate etc.
31. Proceedings against unincorporated bodies.

Supplementary and general

32. Supervisory authority.
33. Supervision by supervisory authority.
34. Assistance in preparing guidance.
35. Notices.
36. Crown application.
37. Regulations.

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,752 of 24th December, 2009

B. 42/09

BILL

FOR

AN ACT to provide for regulation of certain financial businesses through the imposition of counter-measures against certain countries, territories, governments, natural or corporate persons in connection with terrorist financing, money laundering and the proliferation of weapons of mass destruction; and to provide a framework for their enforcement, supervision and exemption, as appropriate.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Counter-Terrorism Act 2009 and comes into operation on the day of publication.

Interpretation.

2.(1) In this Act, unless the context otherwise requires—

“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

“biological weapon” means anything to which section 1(1)(a) or (b) of the Weapons of Mass Destruction Act 2004 applies;

“chemical weapon” means a chemical weapon as defined by section 9 of the Weapons of Mass Destruction Act 2004;

“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

“conduct” includes acts and omissions;

“country” includes territory;

“document” means information recorded in any form;

“enforcement officer” means a person appointed under section 15;

“life assurance consolidation directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance;

“markets in financial instruments directive” means Directive 2004/39/EC of the European Parliament and of the Council of 12th April 2004 on markets in financial instruments;

“Minister” means the Minister with responsibility for finance;

“money laundering” means an act which falls within sections 2, 3 or 4 of the Crime (Money Laundering and Proceeds) Act 2007;

“notice” means a notice in writing;

“nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon;

“radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material;

“supervisory authority” is to be construed in accordance with section 32;

“terrorist financing” means—

- (a) the use of funds, or the making available of funds, for the purposes of terrorism; or

- (b) the acquisition, possession, concealment, conversion or transfer of funds that are (directly or indirectly) to be used or made available for those purposes.

(2) In this Act any reference to an amount in one currency includes the equivalent amount in any other currency.

(3) Unless otherwise defined, expressions used in this Act and in—

- (a) Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing; or
- (b) Commission Directive 2006/70/EC of 1st August 2006 laying down implementing measures for that directive,

have the same meaning as in the relevant directive.

Conditions for giving a direction

Conditions for giving a direction.

3.(1) The Minister may give a direction under this Act if one or more of the following conditions is met in relation to a country.

(2) The first condition is that the Financial Action Task Force has advised that measures should be taken in relation to the country because of the risk of terrorist financing or money laundering activities being carried on—

- (a) in the country;
- (b) by the government of the country; or
- (c) by persons resident or incorporated in the country.

(3) The second condition is that the Minister reasonably believes that there is a risk that terrorist financing or money laundering activities are being carried on—

- (a) in the country;

- (b) by the government of the country; or
- (c) by persons resident or incorporated in the country,

and that this poses a significant risk to the interests of Gibraltar.

(4) The third condition is that the Minister is advised by the Secretary of State for Foreign and Commonwealth Affairs that Her Majesty's Government in the United Kingdom reasonably believes that—

- (a) the development or production of nuclear, radiological, biological or chemical weapons in the country; or
- (b) the doing in the country of anything that facilitates the development or production of any such weapons,

poses a significant risk to the interests of Gibraltar.

(5) The power to give a direction is not exercisable in relation to an EEA state.

Persons to whom a direction may be given.

4.(1) A direction under this Act may be given to—

- (a) a particular person operating in the financial sector;
- (b) any description of persons operating in the financial sector; or
- (c) all persons operating in that sector.

(2) In this Act “relevant person”, in relation to a direction, means any of the persons to whom the direction is given.

(3) A direction may make different provision in relation to different descriptions of relevant person.

Persons operating in the financial sector.

5.(1) References in this Act to a person operating in the financial sector are to a natural or legal person who is a credit or financial institution that—

- (a) is acting in the course of a business carried on by it in Gibraltar; or
- (b) is established, incorporated or registered in Gibraltar.

(2) This is subject to the exceptions in section 7.

Meaning of “credit or financial institution”.

6. Credit or “financial institution” means–

- (a) an undertaking, including a money service business, when it carries out one or more of the following activities–
 - (i) acceptance of deposits and other repayable funds;
 - (ii) lending including, inter alia, consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting);
 - (iii) financial leasing;
 - (iv) money transmission services;
 - (v) issuing and administering means of payment (e.g. credit cards, travellers’ cheques and bankers’ drafts);
 - (vi) guarantees and commitments;
 - (vii) trading for own account or for account of customers in–
 - (a) money market instruments (cheques, bills, certificates of deposit, etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments; or

- (e) transferable securities;
- (viii) participation in securities issues and the provision of services related to such issues;
- (ix) advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
- (x) money broking;
- (xi) portfolio management and advice;
- (xii) safekeeping and administration of securities;
- (xiii) safe custody services;
- (b) a person whose regular occupation or business is the provision to other persons of an investment service or the performance of an investment activity on a professional basis, when providing or performing investment services or activities (within the meaning of the markets in financial instruments directive, other than a person falling within Article 2 of that directive);
- (c) a collective investment undertaking, when marketing or otherwise offering its units or shares;
- (d) an insurance company duly authorised in accordance with the life assurance consolidation directive, when it carries out activities covered by that directive;
- (e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9th December 2002 on insurance mediation (other than a tied insurance intermediary as mentioned in Article 2(7) of that Directive), when it acts in respect of contracts of long-term insurance within the meaning given by section 2 of, and Schedule 2 to, the Financial Services (Insurance Companies) Act.

Exceptions.

7.(1) A person who falls within the definition of “credit or financial institution” solely as a result of engaging in financial activity on an occasional or very limited basis is not regarded for the purposes of this Act as operating in the financial sector.

(2) For the purposes of sub-section (1) a person is regarded as engaging in a financial activity on an occasional or very limited basis if–

- (a) the person’s total annual turnover in respect of the financial activity does not exceed £64,000 or equivalent amount in relevant currency;
- (b) the financial activity is limited in relation to any customer to no more than one transaction exceeding €1,000 or equivalent amount in relevant currency (whether the transaction is carried out in a single operation or a series of operations which appear to be linked);
- (c) the financial activity does not exceed 5% of the person’s total annual turnover;
- (d) the financial activity is ancillary and directly related to the person’s main activity;
- (e) the financial activity is not the transmission or remittance of money (or any representation of monetary value) by any means;
- (f) the person’s main activity is not that of a credit or financial institution; and
- (g) the financial activity is provided only to customers of the person’s main activity.

Requirements that may be imposed by a direction

Requirements that may be imposed by a direction.

8.(1) A direction under this Act may impose requirements in relation to transactions or business relationships with—

- (a) a person carrying on business in the country;
- (b) the government of the country;
- (c) a person resident or incorporated in the country.

(2) The direction may impose requirements in relation to—

- (a) a particular person within sub-section (1);
- (b) any description of persons within that sub-section; or
- (c) all persons within that sub-section.

(3) In this Act “designated person”, in relation to a direction, means any of the persons in relation to whom the direction is given.

(4) In this Act a transaction or business relationship with a designated person includes a transaction or business relationship with any third party where the person undertaking the transaction or business relationship knows or reasonably suspects that ultimately the designated person will benefit, or it is intended that he will benefit.

(5) The kinds of requirement that may be imposed by a direction under this Act are specified in—

- (a) section 9 (customer due diligence);
- (b) section 10 (enhanced ongoing monitoring);
- (c) section 11 (systematic reporting); and
- (d) section 12 (limiting or ceasing business).

(6) A direction may make different provision—

- (a) in relation to different descriptions of designated person; and
- (b) in relation to different descriptions of transaction or business relationship.

(7) The requirements imposed by a direction must be proportionate having regard to the advice mentioned in section 3(2) or, as the case may be, the risk mentioned in section 3(3) or (4) to the interests of Gibraltar.

Customer due diligence.

9.(1) A direction may require a relevant person to undertake enhanced customer due diligence measures—

- (a) before entering into a transaction or business relationship with a designated person; and
- (b) during a business relationship with such a person.

(2) The direction may do either or both of the following—

- (a) impose a general obligation to undertake enhanced customer due diligence measures;
- (b) require a relevant person to undertake specific measures identified or described in the direction.

(3) “Customer due diligence measures” means measures to—

- (a) establish the identity of the designated person,
- (b) obtain information about—
 - (i) the designated person and their business; and
 - (ii) the source of their funds; and
- (c) assess the risk of the designated person being involved in relevant activities.

(4) In sub-section (3)(c) “relevant activities” means–

- (a) terrorist financing;
- (b) money laundering; or
- (c) the development or production of nuclear, radiological, biological or chemical weapons or the facilitation of that development or production.

Enhanced ongoing monitoring.

10.(1) A direction may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a designated person.

(2) The direction may do either or both of the following–

- (a) impose a general obligation to undertake enhanced ongoing monitoring;
- (b) require a relevant person to undertake specific measures identified or described in the direction.

(3) “Enhanced ongoing monitoring” of a business relationship means–

- (a) keeping up to date information and documents obtained for the purposes of customer due diligence measures; and
- (b) scrutinising transactions undertaken during the course of the relationship (and, where appropriate, the source of funds for those transactions) to ascertain whether the transactions are consistent with the relevant person’s knowledge of the designated person and their business.

Systematic reporting.

11.(1) A direction may require a relevant person to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons.

(2) A direction imposing such a requirement must specify how the direction is to be complied with, including–

- (a) the person to whom the information and documents are to be provided; and
- (b) the period within which, or intervals at which, information and documents are to be provided.

(3) The power conferred by this section is not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(4) The exercise of the power conferred by this section and the provision of information under it is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

Limiting or ceasing business.

12. A direction may require a relevant person not to enter into or continue to participate in—

- (a) a specified transaction or business relationship with a designated person;
- (b) a specified description of transactions or business relationships with a designated person; or
- (c) any transaction or business relationship with a designated person.

Procedural provisions and licensing

Publication and duration of directions.

13.(1) Where a direction is addressed to a particular person, in addition to any other requirements imposed under this Act, the Minister must cause a copy of the direction to be sent to the addressee.

(2) A direction issued by the Minister under this Act shall be published in the Gazette.

(3) The direction (if not previously revoked and whether or not varied) ceases to have effect at the end of the period of one year beginning with the day on which it was made.

(4) Nothing in subsection (3) prevents the Minister from issuing a further direction on the same or similar terms to that which ceased to have effect.

(5) Where the direction is varied or ceases to have effect (whether on revocation or otherwise), the Minister shall cause a notice to be published in the Gazette to publicise that fact.

Directions limiting or ceasing business: exemption by licence.

14.(1) The following provisions apply where a direction contains requirements of a kind mentioned in section 12 (limiting or ceasing business).

(2) The Minister may grant a licence to exempt acts specified in the licence from those requirements.

(3) A licence may be—

- (a) general or granted to a description of persons or to a particular person;
- (b) subject to conditions;
- (c) of indefinite duration or subject to an expiry date.

(4) The Minister may vary or revoke a licence at any time.

(5) On the grant, variation or revocation of a licence, the Minister must publish a notice in the Gazette to that effect, and may take such other steps as he considers appropriate to publicise the grant, variation or revocation of the licence.

Enforcement

Enforcement officers.

15.(1) The Minister may by notice in the Gazette appoint such persons as it deems fit for the purposes of enforcing the provisions of, or giving effect to, sections 16 to 20.

(2) Subject to any regulations made under section 37, a person appointed pursuant to subsection (1) shall hold that position for the period stated in the notice of appointment.

Power to require information or documents.

16.(1) An enforcement officer may by notice to a relevant person require the person—

- (a) to provide such information as may be specified in the notice, or
- (b) to produce such documents as may be so specified.

(2) An officer may exercise powers under this section only if the information or documents sought to be obtained as a result are reasonably required in connection with the exercise by the enforcement authority for whom the officer acts of its functions under this Act.

(3) Where an officer requires information to be provided or documents produced under this section—

- (a) the notice must set out the reasons why the officer requires the information to be provided or the documents produced, and
- (b) the information must be provided or the documents produced—
 - (i) before the end of such reasonable period as may be specified in the notice; and
 - (ii) at such place as may be so specified.

(6) In relation to a document in electronic form the power to require production of it includes a power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.

(7) An enforcement officer may take copies of, or make extracts from, any document produced under this section.

(8) The production of a document does not affect any lien which a person has on the document.

Entry, inspection without a warrant etc.

17.(1) Where an enforcement officer has reasonable cause to believe that any premises are being used by a relevant person in connection with the person's business activities, the officer may on producing evidence of his identity and written evidence of his appointment as an enforcement officer, at any reasonable time—

- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business activities by the relevant person;
- (d) inspect any document found on the premises;
- (e) require any person on the premises to provide an explanation of any document or to state where it may be found.

(2) An enforcement officer may take copies of, or make extracts from, any document found under sub-section (1).

(3) An officer may exercise powers under this section only if the information or document sought to be obtained as a result is reasonably required in connection with the exercise by him of his functions under this Act.

(4) In this section “premises” means any premises other than premises used only as a dwelling.

Entry to premises under warrant.

18.(1) A magistrate may issue a warrant under this section if satisfied on information on oath given by an enforcement officer that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is—

- (a) that there is on the premises specified in the warrant a document in relation to which a requirement could be imposed under section 16; and
- (b) that if such a requirement were to be imposed—
 - (i) it would not be complied with; or
 - (ii) the document to which it relates would be removed, tampered with or destroyed.

(3) The second set of conditions is—

- (a) that a person on whom a requirement has been imposed under section 16 has failed (wholly or in part) to comply with it; and
- (b) that there is on the premises specified in the warrant a document that has been required to be produced.

(4) The third set of conditions is—

- (a) that an enforcement officer has been obstructed in the exercise of a power under section 17; and
- (b) that there is on the premises specified in the warrant a document that could be inspected under section 16.

(5) A magistrate may issue a warrant under this section if satisfied on information on oath given by an officer that there are reasonable grounds for suspecting that—

- (a) an offence under this Act has been, is being or is about to be committed by a relevant person; and
 - (b) there is on the premises specified in the warrant a document relevant to whether that offence has been, or is being or is about to be committed.
- (6) A warrant issued under this section shall authorise an enforcement officer—
- (a) to enter the premises specified in the warrant;
 - (b) to search the premises and take possession of anything appearing to be a document specified in the warrant or to take, in relation to any such document, any other steps which may appear to be necessary for preserving it or preventing interference with it;
 - (c) to take copies of, or extracts from, any document specified in the warrant;
 - (d) to require any person on the premises to provide an explanation of any document appearing to be of the kind specified in the warrant or to state where it may be found;
 - (e) to use such force as may reasonably be necessary.

Restrictions on powers.

19.(1) This section applies in relation to the powers conferred by—

- (a) section 16 (power to require information or documents);
- (b) section 17 (entry, inspection without warrant etc); or
- (c) section 18 (entry to premises under warrant).

(2) Those powers are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(3) The exercise of those powers and the provision of information or production of documents under them is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

Failure to comply with information requirement.

20.(1) If on an application made by an enforcement officer, it appears to the court that a person (the “information defaulter”) has failed to do something that they were required to do under section 16(1), the court may make an order under this section.

(2) An order under this section may require the information defaulter—

- (a) to do the thing that they failed to do within such period as may be specified in the order;
- (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.

(3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons that is not a partnership, the order may require any officer of the body corporate, partnership or body, who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.

Power to impose civil penalties.

21.(1) The Minister may impose a penalty of such amount as he considers appropriate on a person who fails to comply with a requirement imposed—

- (a) by a direction under this Act; or
- (b) by a condition of a licence under section 14.

(2) In subsection (1) “appropriate” means effective, proportionate and dissuasive.

(3) No such penalty is to be imposed if the Minister is satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(4) In deciding whether to impose a penalty for failure to comply with a requirement, the Minister must consider whether the person followed any relevant guidance which was at the time issued by the Minister or a supervisory authority under section 34.

(5) A person on whom a penalty is imposed under this section is not liable to be proceeded against for an offence in respect of the same failure.

Imposition of penalty by enforcement authority: procedure.

22.(1) This section applies if the Minister proposes to impose a penalty under section 21 on a person.

(2) The Minister must give the person notice of—

- (a) the proposal to impose the penalty and the proposed amount;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations to him within a specified period (which may not be less than 28 days).

(3) The Minister must then decide, within a reasonable period, whether to impose a penalty under section 21 and must give the person notice—

- (a) if he decides not to impose a penalty, of that decision;
- (b) if he decides to impose a penalty, of the following matters—
 - (i) the decision to impose a penalty and the amount;
 - (ii) the reasons for the decision; and
 - (iii) the right to appeal under section 23.

Appeal against imposition of civil penalty.

23.(1) Commencing with the date of receipt of the notice that a penalty has been imposed under section 21, the person to whom the notice relates may appeal to the Supreme Court within 28 days.

(2) On the appeal the court may confirm or quash the penalty, or substitute it for one that could have been imposed by the Minister.

Payment and recovery of civil penalties.

24.(1) A penalty imposed under section 21 is payable to the Government of Gibraltar who shall cause any amount received to be paid into the Consolidated Fund.

(2) Any such penalty is a debt due to the Government of Gibraltar and is recoverable accordingly.

Offences

Offences: failure to comply with requirement imposed by direction.

25. (1) A person who fails to comply with a requirement imposed by a direction under this Act commits an offence, subject to the following provisions.

(2) No offence is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) In deciding whether a person has committed an offence under this section the court must consider whether the person followed any relevant guidance that was at the time issued by the Minister or a supervisory authority.

(4) A person who commits an offence under this section is liable—

- (a) on summary conviction to, imprisonment for 12 months or the statutory maximum or both;
- (b) on conviction on indictment to imprisonment for 2 years or a fine, or both.

Offences in connection with licences.

26.(1) A person commits an offence who for the purpose of obtaining a licence under section 14—

- (a) provides information that is false in a material respect or a document that is not what it purports to be, and
 - (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction to, imprisonment for 12 months or the statutory maximum fine or both;
 - (b) on conviction on indictment to imprisonment for 2 years or a fine, or both.

Extra-territorial application of offences.

27.(1) An offence under this Act may be committed by a person operating in the financial sector by conduct wholly or partly outside Gibraltar.

(2) Nothing in this section affects any criminal liability arising otherwise than under this section.

Prosecution of offences.

28. Proceedings for an offence under this Act may only be instituted by or with the consent of the Attorney-General.

Jurisdiction to try offences.

29. Where an offence under this Act is committed outside Gibraltar proceedings for the offence may be taken in Gibraltar and the offence may for all incidental purposes be treated as having been committed in Gibraltar.

Liability of officers of bodies corporate etc.

30.(1) If an offence under this Act committed by a body corporate is shown—

- (a) to have been committed with the consent or the connivance of an officer of the body corporate, or
- (b) to be attributable to any neglect on the part of any such officer,

the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.

(2) If an offence under this Act committed by a partnership is shown—

- (a) to have been committed with the consent or the connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner,

the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.

(3) If an offence under this Act committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or the connivance of an officer of the association; or
- (b) to be attributable to any neglect on the part of any such officer,

the officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.

(4) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body.

(5) In this section—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, and
- (b) in relation to an unincorporated association, means any officer of the association or any member of its

governing body, or a person purporting to act in such capacity;

“partner” includes a person purporting to act as a partner.

Proceedings against unincorporated bodies.

31.(1) Proceedings for an offence under this Act alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) Rules of court relating to the service of documents have effect in relation to proceedings for an offence under this Act as if the partnership or association were a body corporate.

(3) A fine imposed on the partnership or association on its conviction of such an offence is to be paid out of the funds of the partnership or association.

Supplementary and general

Supervisory authority.

32. Subject to any regulations made under section 37, a supervisory authority designated under section 19 of, and Part I of Schedule 2 to, the Crime (Money Laundering and Proceeds) Act 2007 is, for the purposes of this Act, a supervisory authority of a corresponding transaction or business relationship falling within sections 6 and 7 of this Act.

Supervision by supervisory authority.

33. A supervisory authority shall take appropriate measures to monitor persons operating in the financial sector for the purpose of securing compliance by those persons with the requirements of any directions under this Act.

Assistance in preparing guidance.

34. The Minister or a supervisory authority with the Minister’s prior consent may publish guidance for the purposes of section 25 (Offences: failure to comply with requirement imposed by direction).

Notices.

35. A notice under this Act may be given to a person—

- (a) by posting it to the person's last known address, or
- (b) where the person is a body corporate, partnership or unincorporated association, by posting it to the registered or principal office of the body, partnership or association.

Crown application.

36.(1) Subject to subsections (2) to (4) this Act binds the Crown in right of Her Government of Gibraltar.

(2) No contravention by the Crown of a provision of this Act makes the Crown criminally liable.

(3) The Supreme Court may, on the application of a person appearing to the court to have an interest, declare unlawful any act or omission of the Crown that constitutes such a contravention.

(4) Nothing in this section affects Her Majesty in her private capacity.

Regulations.

37. The Minister may make regulations—

- (a) to further provide for the issue of licences under section 14, including the payment of any fee;
- (b) to regulate any matter in relation to enforcement officers, including but not limited to the terms and conditions of appointment, the discharge of any obligations;
- (c) to provide for the supervision of transactions or businesses relationships under section 32, including the appointment of supervisory authorities for any particular transaction or business relationship to which this Act applies;

- (d) to provide for the implementation of an European Union or other international obligation;
- (e) for the better enforcement or implementation or administration of this Act;
- (f) for making, regulating and enforcing any provision relating to the international fight against terrorism, or the advancement of counter-terrorism.

EXPLANATORY MEMORANDUM

This Bill provides for the taking of action in the circumstances set out in section 3. The conditions that need to be satisfied in general terms are—

- (1) that the Financial Action Task Force has advised that counter measures be taken against a country or territory, due to there being a risk of terrorist financing or money laundering;
- (2) the Minister believes such activities pose a risk to the interests of Gibraltar; or
- (3) the Minister has been advised that the UK Government believes that the development or production of nuclear, radiological, biological or chemical weapons in that country or territory or activities relating to the facilitation of their development or production, poses a significant risk to the interests of Gibraltar.

This Bill, subject to the exceptions in clause 7, affects only businesses operating in the financial sector to which clause 6 applies.

Clause 8 sets out the requirements that may be imposed by a direction and these relate to customer due diligence, enhanced ongoing monitoring, systematic reporting and limiting or ceasing business (clauses 9 to 12).

Directions that are issued under this Bill are to be gazetted. The obligation to publish arises also in the context of revocations, variations and the expiry of the direction.

Where a direction provides for the limitation or cessation of business an exemption may be issued by the Minister.

Enforcement of the provisions of clauses 16 to 20 is by enforcement officers which are appointed by the Minister. An enforcement officer may obtain information and documents pursuant to clause 16 and may gain access to premises without a warrant, as provided for in clause 17. Documents and information attracting legal professional privilege remain exempt from the provisions in clauses 16 to 18.

Clauses 21 to 24 provide for the imposition of civil penalties which may be the subject of appeal to the Supreme Court. Any penalty imposed is recoverable by the Government of Gibraltar, as a debt.

Clause 25 creates the offence of failing to comply with a requirement imposed by a direction and clause 26 creates offences in relation to a licence issued under clause 14.

Clauses 27 to 29 provide for the prosecution of offences where there is an extraterritoriality issue.

Clause 32 provides that, to the extent that an activity is caught by both this Bill and the Crime (Money Laundering and Proceeds) Act 2007 and there is a supervisory authority designated under that Act, it shall also be a supervisory authority for the purposes of this Bill.

Under this Bill a supervisory authority must monitor for compliance with directions issued under this Bill. It may also issue guidance for the purposes of clause 25.

Clause 36 states the extent to which the Crown is bound by the provisions of this Bill.

Clause 37 provides a regulation making power.

**Printed by the Gibraltar Chronicle Limited
Printing Office, 2, Library Gardens,
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price £1.45p**