

GUERNSEY STATUTORY INSTRUMENT	GREFFE ROYAL COURT 2 / JUN 2000
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The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2000

Made	30 May 2000
Laid before the States	2000
Coming into operation	5 June 2000

THE STATES ADVISORY AND FINANCE COMMITTEE, in exercise of the powers conferred upon it by section 49 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, hereby makes the following Regulations :-

AMENDMENTS TO THE 1999 REGULATIONS

1. Paragraph 5 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 shall be deleted and replaced with the following :-

RECORD – KEEPING PROCEDURE

5. (1) A financial services business shall retain each customer verification document in its original form for at least the minimum retention period.

(2) A financial services business shall retain each customer document (not being a customer verification document) in its original form, or a complete copy of the original certified as such by a manager, partner or director of the financial services business, for at least the minimum retention period.

(3) Documents retained under this Regulation shall be retained in a manner that makes their retrieval readily practicable.

(4) Where a financial services business is required by law to release an original of a customer verification document before the end of the minimum retention period, the financial services business shall-

- (a) retain a complete copy of the document until the period has ended or the original is returned, whichever occurs first; and

(b) maintain a register of documents so released.

2. In paragraph 9 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999, the following definitions should be deleted :-

“customer document” means a document relating to a customer transaction of the financial services business which is given to it by or on behalf of a customer (whether or not the document is signed by or on behalf of the customer and whether or not the document originated from the financial services business).

“essential customer document” in relation to a financial services business means a customer document which does not relate to the day-to-day operation of an account held with the financial services business but which was obtained by the financial services business during the customer verification process.

“minimum retention period” in relation to a customer document, an essential customer document or any non-customer document, means –

(i) in the case of account opening records, a period of 5 years after the day which the account is closed or, where an account has become dormant, 5 years from the last transaction;

(ii) if the document relates to the opening by a person of a deposit box held by the financial services business, a period of 6 years after the day on which the deposit box ceases to be used by the person;

(iii) in the case of account ledger records, a period of 6 years after the date on which the transaction or series of transactions is completed; or

(iv) in any other case, the period of 3 years following the date on which the relevant transaction or series of transactions took place.

“non-customer document” is a document which is not a customer document or an essential customer document.

3. In paragraph 9 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 the following definitions should be inserted:-

“customer document” means a document relating to a customer of a financial services business which is a record of a financial services business’ dealings with a customer or a person or entity acting on a customer’s behalf. The retention of customer documents must ensure, in so far as it is practicable, that in any subsequent investigation a financial services business can provide the relevant authorities with its section of the audit trail.

“customer verification document” means a customer document obtained or created by a financial services business during a customer verification process.

“minimum retention period” means :-

- (i) In the case of a customer verification document, a period of six years after the day on which a business relationship or one-off transaction ceases or, where customer activity is dormant, six years from the last transaction;
- (ii) In the case of a customer document which is not a customer verification document, a period of six years after the day on which all activities taking place in the course of the dealings in question were completed.

CITATION

4. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2000.

COMMENCEMENT

5. These Regulations shall come into force on 5 June 2000.

Dated this 30 Day of May 2000.



L C Morgan
President of the States Advisory and Finance Committee
For and on behalf of the Committee.

EXPLANATORY NOTE

This amendment to the Regulations increases the period of retention of records for financial services businesses. Prior to this amendment records were required to be kept for either three, five or six years depending on the type of record. However, it is desirable to increase this requirement to six years for all records for the following reasons:

- (i) The OECD's Financial Action Task Force on Money Laundering states in its 40 Recommendations that "Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities" (Recommendation 12). The Committee has fully endorsed the FATF Recommendations on two separate occasions. Guernsey's requirement to keep certain supporting documentation only for three years has been noted and criticised by FATF;
- (ii) Legal action based on a contractual relationship may be commenced at any time within six years of a particular act or omission; and
- (iii) The Guernsey Financial Services Commission has noted during its on-site reviews that financial services businesses generally keep records for at least six years.