

2002 No. 27

**The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey)
Regulations, 2002**

Made:	14 August 2002
Laid before the States:	2002
Coming into operation:	14 August 2002

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^a hereby makes the following Regulations:-

OFFENCES AND PENALTIES

1. (1) No person shall, in the course of any financial services business carried on by him in or from within the Bailiwick of Guernsey, form a business relationship or carry out a one-off transaction, with or for another unless -
 - (a) the person carrying on the financial services business maintains the following procedures established in relation to his business -
 - (i) identification procedures in accordance with Regulations 3 and 4 below;
 - (ii) record-keeping procedures in accordance with Regulation 5 below;
 - (iii) internal reporting procedures in accordance with Regulation 6 below;
and
 - (iv) such other procedures of internal control and communication as may be appropriate for the purposes of installing money laundering avoidance procedures, the financing of terrorism avoidance procedures and preventing money laundering and the financing of terrorism;

^a Order in Council No. VIII of 1999

- (b) he takes appropriate measures from time to time for the purpose of making employees whose duties relate to financial services business aware of -
 - (i) the procedures under sub-paragraph (a) above that are maintained by him in relation to the business; and
 - (ii) the enactments relating to money laundering and the financing of terrorism;
 - (c) he provides those employees from time to time with training in connection with the subjects contained within Regulation 7 below; and
 - (d) he maintains procedures established in relation to his business in accordance with the notification requirements of Regulation 8 (and he is a financial services business defined in paragraphs 1, 6, 7 and 8 of the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999).
- (2) However, an individual who does not, in the carrying on of a financial services business, employ or act in association with any other person need not maintain internal reporting procedures in accordance with Regulation 6 below.
- (3) Any person who contravenes this Regulation shall be guilty of an offence and liable -
- (a) on conviction, on indictment, to imprisonment not exceeding a term of two years or a fine or both;
 - (b) on summary conviction, to a fine not exceeding level 5 on the Uniform Scale.
- (4) In determining whether a person has complied with any of the requirements of paragraph (1) above, a court may take account of -
- (a) the Guidance Notes and any other guidance issued, adopted or approved by the Guernsey Financial Services Commission; and
 - (b) any other relevant guidance issued by a body that regulates or is representative of any financial services business carried on by that person.
2. (1) Where an offence under Regulation 1 above committed by a body corporate is proved to have been committed with the consent or connivance, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who is purporting to act in any such capacity he,

as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by the members, paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.
- (3) Where an offence under Regulation 1 above committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, any partner in the partnership or (as the case may be) a person concerned in the management or control of the association, he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

IDENTIFICATION PROCEDURES

3. (1) A financial services business carrying on or providing services in, or from within, the Bailiwick of Guernsey shall establish and maintain procedures which require that -
 - (a) any applicant for business intending to carry on activities of a type mentioned in paragraph (2) of this Regulation shall produce satisfactory evidence of his identity as soon as practicable after first making contact with the financial services business (and taking account of the provisions of paragraph (4) of this Regulation);
 - (b) where satisfactory evidence of his identity is not obtained in relation to any activity mentioned in paragraph (2)(a), (2)(b) or (2)(c) of this Regulation, that activity shall not proceed any further; and
 - (c) where satisfactory evidence of his identity is not obtained in relation to any activity mentioned in paragraph (2)(d) of this Regulation, that activity shall not proceed, except in accordance with directions given for the purpose by a police officer duly authorised for that purpose.
- (2) This Regulation applies to the following activities -
 - (a) the forming of a business relationship;
 - (b) a significant one-off transaction;
 - (c) two or more one-off transactions -
 - (i) which appear to any person handling the transaction on behalf of the financial services business to be linked; and

- (ii) in respect of which the total amount payable by or to the applicant is £10,000 or more (or its equivalent at the time of the transaction in another currency); and
 - (d) any one-off transaction where any person handling the transaction on behalf of the financial services business knows or suspects -
 - (i) that the applicant is engaged in money laundering or the financing of terrorism; or
 - (ii) that the transaction is carried out on behalf of another person engaged in money laundering or the financing of terrorism.
- (3) Evidence of identity is satisfactory if -
 - (a) it is reasonably capable of establishing that the applicant is who he claims to be; and
 - (b) the person who obtains the evidence is satisfied, in accordance with the procedures maintained by the financial services business, that it does establish that fact.
- (4) In determining the time within which satisfactory evidence of a person's identity must be obtained in relation to any particular activity identified in paragraph (2) of this Regulation, all the circumstances shall be taken into account including, in particular -
 - (a) the nature of the activity;
 - (b) the geographical location of the applicant;
 - (c) whether it is practical to obtain evidence before commitments are entered into or before money is transferred; and
 - (d) in relation to activities of a type described in paragraph (2)(b) or (2)(c) of this Regulation, the earliest stage at which there are reasonable grounds for believing that the total amount involved in the transaction or transactions is a significant one-off transaction or is two or more one-off transactions.
- 4. (1) In addition to Regulation 3 above, this Regulation applies where an applicant for business is or appears to be acting otherwise than as principal.
- (2) Identification procedures maintained by financial services businesses in respect of applicants to whom this paragraph applies shall require reasonable measures to be taken (as prescribed in the Guidance Notes), for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.

- (3) In determining what constitutes reasonable measures in any particular case, regard shall be had to all the circumstances and, in particular, to the best practice which is followed in the relevant field of business.
- (4) Where the applicant for business who is, or appears to be, acting as agent for a principal -
 - (a) is another financial services business or a person professionally qualified in financial services, the law or accountancy; and
 - (b) is acting in the course of business to which he is subject to regulation or supervision in Guernsey or in any other jurisdiction listed in Guidance Notes issued from time to time by the Guernsey Financial Services Commission as being an equivalent jurisdiction;

it shall be reasonable for the financial services business to accept a written assurance from the applicant for business to the effect that evidence of the identity of the principal on whose behalf the applicant may act has been obtained, recorded and retained under procedures maintained by the applicant for business.

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.

INTERNAL REPORTING PROCEDURES

6. A financial services business shall institute and maintain clear internal reporting procedures which -
 - (1) identify a person as the reporting officer and provide the name and title of that person to the Guernsey Financial Services Commission and the Financial Intelligence Service as soon as is reasonably practicable;
 - (2) require that a report is made to him of any information or other matter coming to the attention of any member of staff which, in the opinion of that person, gives rise to a knowledge or suspicion that another person is engaged in money laundering or that he is providing financial assistance for terrorism or he is facilitating the retention or control of terrorist funds by or on behalf of another;
 - (3) require that any such report is considered by the reporting officer in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
 - (4) allow the reporting officer to have access to any other information which may be of assistance to him in considering the report; and
 - (5) ensure that the information or other matter contained in a report is disclosed to a police officer where the reporting officer knows or suspects that a person is engaged in money laundering or the financing of terrorism.

TRAINING PROCEDURES

7. A financial services business shall ensure that key staff receive comprehensive training in -
 - (1) the relevant laws;
 - (2) vigilance policy (including vigilance systems);
 - (3) the recognition and handling of suspicious transactions; and
 - (4) the personal obligations of all key staff under the relevant laws.

NOTIFICATION REQUIREMENTS

8. (a) Financial services businesses not carrying on financial services business defined in paragraphs 2, 3, 4, 5 or 9 of the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall notify the following information to the Guernsey Financial Services Commission -

- (i) its legal name and any trading name(s);
 - (ii) its place and date of incorporation/establishment;
 - (iii) its business address(es);
 - (iv) the names and addresses of directors, partners, senior officers, beneficial owners and any other person(s) who control(s) the business;
 - (v) the name of the person designated to be the reporting officer;
 - (vi) a statement of whether or not the persons listed under (iv) and (v) above have been subject to a criminal conviction (at any time) and, if they have, details of the criminal conviction and the circumstances surrounding it; and
 - (vii) the details of the type(s) of financial services business carried out.
- (b) Persons intending to become financial services businesses other than financial services business defined in paragraphs 2, 3, 4, 5 or 9 of the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall, prior to commencing such business, notify the information specified in paragraph 8(a) to the Guernsey Financial Services Commission.
- (c) Any person who has notified information under sub-paragraphs (a) or (b) above shall inform the Guernsey Financial Services Commission of any change to such information prior to making the change. A change in such information shall include, but is not limited to, the intention to cease carrying on any financial services business.
- (d) Financial services businesses may only carry out financial services business not defined in paragraphs 2, 3, 4, 5 and 9 of the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 in or from within the Bailiwick of Guernsey if they have notified the required information to the Guernsey Financial Services Commission as required under sub-paragraphs (a), (b) or (c) above.
- (e) Financial services businesses not carrying on financial services business defined in paragraphs 2, 3, 4, 5 and 9 of the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall provide the Guernsey Financial Services Commission with any such information that it shall reasonably require in order to verify that such financial services businesses are in compliance with these Regulations.

AMENDMENT TO THE SCHEDULE TO THE LAW

9. The Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall be deleted and replaced with the following:-

“SCHEDULE

Section 49

Financial services business

1. Any person or body carrying on or providing services in or from within the Bailiwick of Guernsey in relation to the business of:-
 - (i) lending (including, but not limited to, consumer credit, mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfaiting) and advancing loans against cheques);
 - (ii) financial leasing;
 - (iii) money service business including money or value transmission services, currency exchange (bureaux de change) and/or cheque cashing;
 - (iv) provision of services for, and/or the facilitation of, the transmission of money or value through an informal money or value transfer system or network;
 - (v) issuing, redeeming, management and/or administration of means of payment (for example, credit, charge and debit cards, cheques, travellers' cheques, money orders and bankers' drafts);
 - (vi) providing financial guarantees and/or commitments;
 - (vii) trading for account of customers (spot, forward, swaps, futures, options, et cetera) in: money market instruments (for example, cheques, bills, certificates of deposit); foreign exchange; exchange, interest rate and/or index instruments; commodity futures, transferable securities and/or other negotiable instruments and/or financial assets, including bullion;
 - (viii) participating in securities issues, including underwriting and/or placement as agent (whether publicly or privately) and/or the provision of services related to such issues;
 - (ix) settlement and/or clearing services for financial assets including securities, derivative products and/or other negotiable instruments;

- (x) providing advice to undertakings on capital structure, industrial strategy and/or related questions and/or advice as well as services relating to mergers and/or the purchase of undertakings;
 - (xi) money broking/changing;
 - (xii) providing individual and/or collective portfolio management services and/or advice;
 - (xiii) providing safe custody services;
 - (xiv) providing the services of safekeeping and/or administration of cash or liquid securities on behalf of clients;
 - (xv) credit unions; and/or
 - (xvi) accepting repayable funds other than deposits.
2. "Deposit taking" as a deposit taking business as defined in the Banking Supervision (Bailiwick of Guernsey) Law, 1994^b, as amended.
 3. "Controlled investment business" as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987^c, as amended.
 4. "Insurance business" as defined in the Insurance Business (Guernsey) Law, 1986^d, as amended.
 5. "Regulated activities" as defined in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^e.
 6. Any person providing services of the type referred to in paragraph 1 above in the course of carrying on the profession of a lawyer unless such services are incidental to the provision of legal advice or services.
 7. Any person providing services of the type referred to in paragraph 1 above in the course of carrying on the profession of an accountant unless such services are incidental to the provision of accountancy advice or services.
 8. Any person providing services of the type referred to in paragraph 1 above in the course of carrying on the profession of an actuary unless such services are incidental to the provision of actuarial advice or services.

b Order in Council No. XIII of 1994

c Ordres en Conseil Vol XXX; p. 281

d Ordres en Conseil Vol XXIX; p. 224

e Order in Council No. I of 2001

9. For the purposes of Regulations 6 and 7 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002, the Guernsey Financial Services Commission.
10. For the avoidance of doubt -
 - (a) an activity conducted as part of advice or of a service is incidental for the purposes of paragraphs 6, 7 and 8 above, if it is carried out without separate remuneration while providing other services (being services which do not themselves constitute services of the type referred to in paragraphs 1 to 5 above) in the course of carrying on the profession of a lawyer, accountant or actuary as the case may be and such activity is subordinate to the main purpose for which those legal, accountancy or actuarial services are provided.
 - (b) the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall not include legal, accountancy or actuarial advice or legal, accountancy or actuarial services provided by any person in the course of carrying on the profession (respectively) of a lawyer, accountant or actuary to any person carrying on a business of the type referred to in that Schedule.
 - (c) persons defined in paragraphs 1(i), 1(ii), 1(vi), 1(viii) and 1(x) above shall not be deemed to be financial services businesses for the purposes of these Regulations in the course of carrying on or providing services to another person at a time when one is a wholly owned subsidiary of the other or both are wholly owned subsidiaries of another person.”

DEFINITIONS

10. In these Regulations -

“**applicant for business**” means any party proposing to a financial services business that they enter into a business relationship or one-off transaction.

“**business relationship**” means a continuing arrangement between two or more parties at least one of whom is acting in the course of business to facilitate the carrying out of transactions between them - (i) on a frequent, habitual, or regular basis; and (ii) where the monetary value of dealings in the course of the arrangement is not known or capable of being known at the opening of an account and/or signing of a terms of business agreement and/or other entry into the relationship that triggers the requirement for verification.

“**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.

“financial services business” are those persons and bodies specified in the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended.

“Guidance Notes” means the Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism issued from time to time by the Guernsey Financial Services Commission.

“key staff” means any employees of a financial services business who deal with customers/clients or their transactions.

“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.

“one-off transaction” means any transaction carried out other than in the course of a business relationship.

“relevant laws” means -

The Money Laundering (Disclosure of Information) (Guernsey) Law, 1995

The Money Laundering (Disclosure of Information) (Alderney) Law, 1998

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

The Drug Trafficking (Bailiwick of Guernsey) Law, 2000

The Money Laundering (Disclosure of Information) (Sark) Law, 2001

The Terrorism (United Nations Measures) (Channel Islands) Order 2001

The Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002

The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002

and such laws of a money laundering and terrorist financing nature as may be enacted from time to time in the Bailiwick of Guernsey.

“reporting officer” means a senior manager, partner or director appointed by a financial services business to have responsibility for vigilance policy and vigilance systems, to decide whether suspicions should be reported and to report to the police if he so decides.

“significant one-off transaction” means a one-off transaction exceeding £10,000 (or currency equivalent) whether a single transaction or consisting of a series of linked one-off transactions or, in the case of an insurance contract, consisting of a series of premiums, exceeding £10,000 (or currency equivalent) in any one year.

“vigilance policy” means the policy and consequent systems, group based or local, of a financial services business to guard against - (i) its business (and the financial system at large) being used for money laundering or the financing of terrorism; and (ii) the committing of an offence under the relevant laws by the financial services business itself or its key staff.

REVOCATION OF PREVIOUS REGULATIONS

11. The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999^f, the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2000^g, the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2001^h and the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2002ⁱ are hereby revoked.

MISCELLANEOUS

12. (1) A reference to an enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment.
- (2) The Interpretation (Guernsey) Law, 1948 applies throughout the Bailiwick to the interpretation of these Regulations as it applies to an enactment in force in the Island of Guernsey.

f G.S.I. 1999 No. 56
g G.S.I. 2000 No. 13
h G.S.I. 2001 No. 22
i G.S.I. 2002 No. 4

CITATION

13. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002.

Dated this 14th day of August, 2002

A handwritten signature in black ink, appearing to read 'L.C. Morgan', with a horizontal line underneath the name.

L.C. MORGAN
President of the State Advisory and Finance Committee
For and on behalf of the Committee

EXPLANATORY NOTE

These Regulations prescribe for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999:

- the identification procedures, record-keeping procedures, internal reporting procedures and training procedures to be established and maintained by financial services businesses; and
- guidance which the Court shall take into account in determining whether any person has complied with a duty or requirement imposed by or in pursuance of the Regulations.

In addition, these Regulations:

- amend the definition of financial services business in the Schedule to the Law;
- require certain financial services businesses to provide the Guernsey Financial Services Commission with information; and
- include provisions relating to the financing of terrorism, as well as money laundering provisions, in light of the Terrorism (United Nations Measures) (Channel Islands) Order 2001, the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

These Regulations also revoke the original Regulations made under the Law and subsequent amendments.