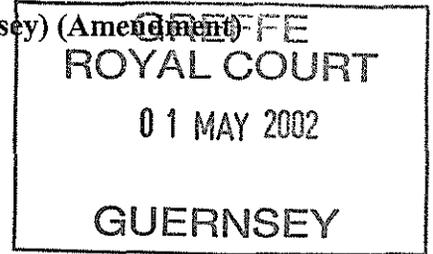


GUERNSEY STATUTORY INSTRUMENT

2002 NO 4

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



Made 1 May 2002
Laid before the States 2002
Coming into operation 28 June 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 and after consultation with the Guernsey Financial Services Commission hereby makes the following Regulations:-

1. AMENDMENT TO THE SCHEDULE TO THE LAW

- (1) 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^(a), as amended.
 3. "Controlled investment business" as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987^(b), as amended.
 4. "Insurance business" as defined in the Insurance Business (Guernsey) Law, 1986^(c), as amended.

^(a) Order in Council No XIII of 1994

^(b) Ordres en Couseil Vol XXX; p281

^(c) Ordres en Couseil Vol XXIX; p224

5. "Regulated activities" as defined in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^(d).
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.
9. For the purposes of Regulations 6 and 7 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 as amended, the Guernsey Financial Services Commission."

(2) For the avoidance of doubt –

- (a) An activity conducted as part of advice or of a service is incidental for the purposes of sub-paragraphs 6, 7 and 8 referred to in the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, 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 of that Schedule) 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 and 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 sub-paragraphs 1(i), (ii), (vi), (viii) and (x) 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.

^(d)Order in Council No I of 2001

2. AMENDMENTS TO THE REGULATIONS

- (1) In sub-paragraph (1) of Regulation 1 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 the following words shall be inserted:

“(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 sub-paragraphs 1,6, 7 and 8 of the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999).”

At the end of sub-paragraph 1(1)(b) “laundering; and” shall be replaced with “laundering;” and at the end of sub-paragraph 1(1)(c) “below.” shall be replaced with “below; and”.

- (2) In sub-paragraph (4)(b) of Regulation 1 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 the words “if no such guidance applied to him,” shall be deleted.

- (3) In sub-paragraph (1) of Regulation 6 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 the following words shall be inserted after the word “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.”

- (4) In sub-paragraph (2) of Regulation 6 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 the following words shall be inserted after the word “laundering”:-

“or that he is providing financial or other assistance for terrorism or he is facilitating the retention or control of terrorist funds by or on behalf of another.”

- (5) Regulation 8 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 shall be deleted and replaced with:-

“NOTIFICATION REQUIREMENTS

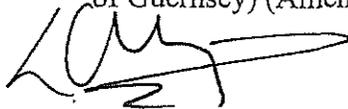
8. (a) Financial services businesses not carrying on financial services business defined in sub-paragraphs 2, 3, 4, 5 or 9 of the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall notify the following information to the Guernsey Financial Services Commission on or before 31 July 2002:-

- (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 money laundering 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 sub-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 sub-paragraph 8(a) to the Guernsey Financial Services Commission.
- (c) Any person who has notified information under sub-paragraphs 8(a) or 8(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 sub-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 with 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 sub-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.”

3. CITATION.

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



L C MORGAN
PRESIDENT
STATES ADVISORY AND FINANCE COMMITTEE
Dated this 1st day of May 2002

Explanatory note

These Amendment Regulations expand the definition of financial services business in the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. The provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 (as amended) introduce a requirement for financial services businesses to introduce appropriate anti-money laundering measures. The definition of financial services businesses has now been expanded to include businesses not previously included.

The Amendment Regulations also require financial services businesses that are not regulated by the Commission (for example, those providing purely lending services, bureaux de change, money transmission agents and persons providing informal value transfer systems) to provide the Commission with relevant information. It has become acknowledged internationally that terrorists and other criminals, who launder terrorist funds and the proceeds of crime, may target such unregulated businesses. It is therefore important for the Commission to understand the scale and scope of such businesses in the Bailiwick.

In determining what measures to introduce account has been taken of recent Regulations introduced in the UK with respect to bureaux de change, cheque cashers and money transmitters. Note has also been taken of changes introduced by the US Treasury and of the Financial Action Task Force on Money Laundering's anti-terrorist Special Recommendations.