

ORDINANCE

OF THE STATES OF DELIBERATION

ENTITLED

The Belarus (Freezing of Funds) (Guernsey) Ordinance, 2006 *

[CONSOLIDATED TEXT]

NOTE

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* No. XXXI of 2006 (Recueil d'Ordonnances Tome XXXI, p. 545); as amended by the Belarus (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2011 (No. ** of 2011); the Belarus (Freezing of Funds) (Guernsey) (Amendment) (No. 2) Ordinance, 2011 (No. XX of 2012); the Belarus (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2012 (No. XXXIV of 2012); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). This Ordinance has been repealed by the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020 (G.S.I. No. 162 of 2020).

ORDINANCE OF THE STATES OF DELIBERATION

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ARRANGEMENT OF SECTIONS

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SCHEDULE Information.

(Made on 11th June, 2006.)

The Belarus (Freezing of Funds) (Guernsey) Ordinance, 2006

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and all other powers enabling them in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b, hereby orders: –

Application of, and infringement of, EC Regulation.

1. [(1) Council Regulation (EC) No. 765/2006 of the 18th May, 2006^c concerning restrictive measures in respect of Belarus ("**the EC Regulation**") is applicable in Guernsey in all respects as if Guernsey were a Member State.]

(2) A person who infringes, or causes or permits any infringement of, [Article 1a, 1b, 2 or 5] of the EC Regulation is guilty of an offence.

NOTE

In section 1, subsection (1), and the words, figures and letters in square brackets in subsection (2), were substituted by the Belarus (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2011, respectively section 1(2) and section 1(3), with effect from 30th June, 2011.

[Modification of Regulation.]

^a Order in Council No. III of 1994.

^b Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

^c OJ L134. 20.5.06. p. 1.

2. The EC Regulation in its application to Guernsey is modified as follows –

- (a) Articles 1.5, 9(a) and 9(b) shall not apply,
- (b) in Article 1(a)3, for "the competent authorities in the Member States as listed in Annex II" substitute "the States of Guernsey [Policy & Resources Committee] (**"the [Policy & Resources Committee]"**)",
- (c) in Article 1(b)2, for "the competent authority of a Member State, as identified on the websites listed in Annex II," substitute "the [Policy & Resources Committee]",
- (d) in Articles 1a and 1b, references to the Union shall be construed as including Guernsey,
- (e) in Article 3 –
 - (i) for "the competent authorities in the Member States, as indicated in the websites listed in Annex II," each time it occurs substitute "the [Policy & Resources Committee]",
 - (ii) for "the Member State concerned" substitute "the [Policy & Resources Committee]",
 - (iii) for "the other Member States and the Commission" each time it occurs substitute "one of Her Majesty's Principal Secretaries of State",

and

- (iv) delete "at least two weeks before the authorisation",

[(ea) in Article 4a –

- (i) for "the competent authorities of the Member States, as indicated in the websites listed in Annex II," substitute "the [Policy & Resources Committee]",
- (ii) for "they deem" substitute "it deems", and
- (iii) for the proviso substitute –

"provided that the [Policy & Resources Committee]:

- (i) has determined that the payment is not, directly or indirectly, to or for the benefit of a person, entity or body listed in Annex I or Annex IA; and
- (ii) has notified one of Her Majesty's Principal Secretaries of State of that determination and its intention to grant the authorisation." ,]

[(eb) in Article 4b, for "the competent authorities in the Member States, as indicated in the websites listed in Annex II," substitute "the [Policy & Resources

Committee],]

- (f) in Article 5.1.(a) –
 - (i) for "the competent authorities indicated in the websites listed in Annex II, in the country where they are resident or located," substitute "the [Policy & Resources Committee]", and
 - (ii) delete ", and directly or indirectly supply such information to the Commission",
- (g) in Article 5.1.(b), for "the competent authorities indicated in the websites listed in Annex II," substitute "the [Policy & Resources Committee]",
- (h) in Articles 3, 7 and 9, references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the [Policy & Resources Committee], and
 - (i) in Article 10 –
 - (i) for "the territory of the Community, including its airspace" substitute "Guernsey, including its airspace and the territorial waters adjacent thereto",
 - (ii) for "the jurisdiction of a Member State" substitute "the jurisdiction of Guernsey",

- (iii) the reference to the law of a Member State shall be construed as including the law of Guernsey, and
- (iv) the reference to the Community shall be construed as including Guernsey.]

NOTES

Section 2 was substituted by the Belarus (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2011, section 1(4), with effect from 30th June, 2011.

In section 2,

the words "Policy & Resources Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016;

paragraph (ea) was inserted by the Belarus (Freezing of Funds) (Guernsey) (Amendment) (No. 2) Ordinance, 2011, section 1, with effect from 31st October, 2011;

paragraph (eb) was inserted by the Belarus (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2012, section 1, with effect from 31st May, 2012.

Information.

3. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the [Committee], of information for the purpose of ensuring compliance with the EC Regulation.

NOTE

In section 3, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 1, with effect from 1st May, 2016.

[Appeals against decisions of [Policy & Resources Committee].

3A. (1) A person aggrieved by a decision of the [Policy & Resources Committee] made under Article 3 of the EU Regulation, or a decision of the [Policy & Resources Committee] not to exercise its powers under that Article, may appeal to the Ordinary Court against that decision on the grounds that –

- (a) the decision was *ultra vires* or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(2) On an appeal under this section the Court may –

- (a) set the decision of the [Policy & Resources Committee] aside and, if the Court considers it appropriate to do so, remit the matter to the [Policy & Resources Committee] with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(3) On an appeal under this section the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the

appeal.]

NOTE

Section 3A was inserted by the Belarus (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2011, section 1(5), with effect from 30th June, 2011.

In section 3A, the words "Policy & Resources Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

Penalties and proceedings.

4. (1) A person guilty of an offence under –
- (a) section 1 or subsection (3), or
 - (b) paragraph 2(b) or (c) of the Schedule,

is liable –

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both,
- (ii) on summary conviction, to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to

both.

(3) A person who in purported compliance with Article 5 of the EC Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

(4) Where a body corporate is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or connivance of, 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 purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

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

Certain provisions of customs and excise Law applicable.

5. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^d applies to the detention of a person for an offence under section 1 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, penalties and proceedings for offences under this Ordinance as they apply to offences, penalties and proceedings for offences under the customs Laws or excise Laws.

^d Ordres en Conseil Vol. XXIII, p. 573; No. XIII of 1991; and No. X of 2004.

Interpretation.

6. (1) In this Ordinance, except where the context requires otherwise

—

"[**Committee**]" means the States of Guernsey [Policy & Resources Committee],

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly,

"**customs Laws**" and "**excise Laws**" mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

"**EC Regulation**" has the meaning given by section 1,

"**Guernsey**" means the Bailiwick of Guernsey apart from the Islands of Alderney and Sark, and

["**Ordinary Court**" means the Royal Court of Guernsey sitting as an Ordinary Court, and]

"**uniform scale of fines**" means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^e.

(2) A reference in this Ordinance to an enactment or to the EC Regulation is a reference thereto as from time to time amended, repealed and re-

^e Ordres en Conseil Vol. XXXI, p. 278.

enacted (with or without modification), extended or applied.

NOTES

In section 6,

the words in the first and second pairs of square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 1 and section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016;

the definition of the expression "Ordinary court" in subsection (1) was inserted by the Belarus (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2011, section 1(6), with effect from 30th June, 2011.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Citation.

7. This Ordinance may be cited as the Belarus (Freezing of Funds) (Guernsey) Ordinance, 2006.

Commencement.

8. This Ordinance shall come into force on the 13th June, 2006.

SCHEDULE

Section 3

INFORMATION

1. (1) The [Committee] (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Guernsey to furnish or produce to it (or, as the case may be, to that authorised person) such information and documents in his possession or control as the [Committee] (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EC Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any

document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2. A person who –

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule shall be disclosed except –

- (a) with the consent of the person by whom the information was furnished or the document was produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent

for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of Guernsey,
- (c) on the authority of the [Committee], to the European Commission or to any of the competent authorities listed in Annex II to the EC Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EC Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.

NOTE

In the Schedule, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 1, with effect from 1st May, 2016.
