

The Burma (Restrictive Measures) (Sark) Ordinance, 2006

THE GENERAL PURPOSES AND FINANCE COMMITTEE, in exercise of the powers conferred on the Chief Pleas 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 section 8A of the Sark (Reform) Law, 1951^b, hereby orders:-

Application of EC Regulation.

1. (1) Council Regulation (EC) No. 817/2006 of the 29th May, 2006^c imposing certain specific restrictive measures in view of the situation in Burma ("**the EC Regulation**") is applicable in Sark in all respects as if Sark were a Member State.

Offences.

2. (1) Any person who, except under the authority of a licence granted by the Council under this Ordinance, directly or indirectly infringes any of the following prohibitions in the EC Regulation -

- (a) Article 2(a), prohibiting the provision of technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related material of all types, to any person, entity or body in, or for use in Burma,
- (b) Article 2(b), prohibiting the provision of financing or financial assistance related to military activities for any sale, supply, transfer or export of arms and related material to any person, entity or body in, or for use in Burma,
- (c) Article 2(c), prohibiting the participation, knowingly

^a Order in Council No. III of 1994.

^b Ordres en Conseil Vol. XV, p. 215; section 8A was inserted by No. XI of 2000.

^c OJ L148, 2.6.2006, p.1.

and intentionally, in activities the object or effect of which is to promote the transactions referred to in Article 2(a) or 2(b),

- (d) Article 3(a), prohibiting the sale, supply, transfer or export of equipment which might be used for internal repression, as listed in Annex I to the EC Regulation, whether or not originating in the Community, to any person, entity or body in, or for use in Burma,
- (e) Article 3(b), prohibiting the provision of technical assistance related to the equipment listed in Annex I to the EC Regulation, to any person, entity or body in, or for use in Burma,
- (f) Article 3(c), prohibiting the provision of financing or financial assistance related to the equipment listed in Annex I to the EC Regulation, to any person, entity or body in, or for use in Burma,
- (g) Article 3(d), prohibiting the participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in Articles 3(a), (b) or (c),
- (h) Article 9(1)(a), prohibiting the grant of any financial loan or credit to Burmese state-owned enterprises listed in Annex IV to the EC Regulation,
- (i) Article 9(1)(b), prohibiting the acquisition or extension of a participation in Burmese state-owned enterprises listed in Annex IV to the EC Regulation, and
- (j) Article 9(2), prohibiting the participation in activities to circumvent the provisions of Article 9(1)(a) and (b),

is guilty of an offence.

- (2) Any person who infringes, or causes or permits any

infringement of Article 6 or 8 of the EC Regulation is guilty of an offence.

Licences.

3. (1) Authorisation for the transactions set out in section 2(1), as provided for in Article 4 of the EC Regulation, shall in Sark be by way of a licence in writing granted by the Council.

(2) If, for the purpose of obtaining a licence, any person -

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or
- (b) recklessly makes any statement or furnishes an document or information which is false in a material particular,

he is guilty of an offence; and any licence granted in connection with the application for which the false statement was made or the false document or information furnished is void as from the time it was granted.

(3) Any person who, having acted under the authority of a licence granted under this section, fails to comply with any of the requirements or conditions to which the licence is subject is guilty of an offence, unless -

- (a) the licence had been previously modified by the Council without that person's consent, and
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified.

Penalties and proceedings.

4. (1) A person guilty of an offence under -

- (a) section 2, 3, or subsection (3), or
- (b) paragraph 2(b) or 2(c) of the Schedule,

is liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both, or
- (ii) on summary conviction, to imprisonment for a term not exceeding three months or 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 8 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 2 or 3 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

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

(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.

Information.

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

Modification of Regulation.

7. The EC Regulation in its application to Sark shall be modified as follows -

(a) in Article 4 (1) for the words "the competent authorities of Member States as listed in Annex II" substitute "the Council",

(b) in Article 7 (1) for the words "The competent authority of a Member State, as listed in Annex II," substitute "The Council",

(c) in Article 7 (1)(d) for the words "the relevant competent authority has notified all other competent authorities" substitute "the Council has notified all competent authorities as listed in Annex II",

(d) at the end of Article 7 for the last three lines substitute -

"The Council shall inform the competent authorities as listed in Annex II and the Commission of any authorisation granted under this paragraph"

(e) in Article 8(1)(a) for the words "the competent authorities of the Member States listed in Annex II where they are resident or located" substitute "the

Council" and for "these competent authorities" substitute "the Council", and

- (f) in Article 8(1)(b) for the words "the competent authorities listed in Annex II" substitute "the Council".
- (g) in Article 9(5) for the words "The relevant competent authority, as listed in Annex II," substitute "the Council" and for "the other Member States" substitute "the Member States as listed in Annex II"

Interpretation.

8. (1) In this Ordinance -

"Council" means the States of Guernsey Policy Council,

"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,

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

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Revocation.

9. The Burma (Sale, Supply, Export, Technical Assistance, Financing and Financial Assistance and Shipment of Equipment) (Penalties and Licences) (Sark) Ordinance 2004 is revoked.

^e Ordres en Conseil Vol. XXXI, p. 320.

Citation and commencement.

10. (1) This Ordinance may be cited as the Burma (Restrictive Measures) (Sark) Ordinance 2006.

(2) This Ordinance shall come into force on 9 June 2006.

SCHEDULE

Section 6

INFORMATION

1. (1) The Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Sark to furnish or produce to it (or, as the case may be, to that authorised person) any information or document in his possession or control which the Council (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 Sark,
- (c) on the authority of the Council, 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.