

ORDINANCE

OF THE STATES OF DELIBERATION

ENTITLED

The Iran (Restrictive Measures) (Guernsey) Ordinance, 2010 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

* No. II of 2011; as amended by the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012 (No. XXIII of 2012). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207). This Ordinance has been repealed by the Iran (Restrictive Measures) (Guernsey) Ordinance, 2012 (No. LVII of 2012)

REPEALED

ORDINANCE OF THE STATES OF DELIBERATION

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The Iran (Restrictive Measures) (Guernsey) Ordinance, 2010

ARRANGEMENT OF SECTIONS

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2. Infringement of prohibitions and requirements in EU Regulation.
3. Undertaking transactions and other activities without authorisation.
4. Licences.
5. Furnishing of false information etc.
6. Penalties and proceedings.
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SCHEDULE Information.

(Made on the 22nd November, 2010.)

The Iran (Restrictive Measures) (Guernsey) Ordinance, 2010

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 on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b, and all other powers enabling the States in that behalf, hereby orders: –

Application of EU Regulation.

1. Council Regulation (EU) No. 961/2010 of the 25th October, 2010^c, concerning restrictive measures against Iran ("**the EU Regulation**") is applicable in Guernsey in all respects as if Guernsey, subject to the modifications in section 9, were a Member State.

[Infringement of prohibitions and requirements in EU Regulation.

2. A person who infringes, or causes or permits any infringement of, any prohibition in, or requirement of, the EU Regulation is guilty of an offence.]

NOTE

Section 2 was substituted by the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012, section 1(2), with effect from 27th January,

^a Ordres en Conseil Vol. XXXV(1), p. 65.

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

^c OJ L 281, 27.10.2010, p. 1.

2012.

[Undertaking transactions and other activities without authorisation.

3. A person who undertakes any transaction or other activity for which authorisation is required under the EU Regulation without the authorisation of the Policy Council is guilty of an offence.]

NOTE

Section 3 was substituted by the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012, section 1(3), with effect from 27th January, 2012.

Licences.

4. (1) Authorisation for the transactions or other activities referred to in section 3, as provided for in the EU Regulation, shall in Guernsey be by way of a licence in writing granted by the Policy 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 a 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 Policy Council without that person's knowledge, and
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified.

Furnishing of false information etc.

5. A person who in purported compliance with [any obligation to provide information under] the EU 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.

NOTE

In section 5, the words in square brackets were substituted by the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012, section 1(4), with effect from 27th January, 2012.

Penalties and proceedings.

6. (1) A person guilty of an offence under section 2, 3, 4 or 5 or paragraph 2(b) or (c) of the Schedule is liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both,

or

- (b) 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 or to a fine not exceeding level 5 on the uniform scale or to both.

(3) 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.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) 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.

7. (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

^d Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278 and Vol. XXXIII, p. 217; Order in Council No. X of 2004; Ordinance No. XXXII of 2005.

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.

(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.

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

Modification of Regulation.

9. The EU Regulation in its application to Guernsey is modified as follows –

- (a) Article 38.1 shall not apply,
- (b) in Article 1(g), the definition of "financial institution" includes a person who is a licensee for the purposes of the Insurance Business (Bailiwick of Guernsey) Law, 2002^e or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002^f,

^e Order in Council No. XXI of 2002; Ordinances Nos. XII and LI of 2008; G.S.I. No. 4 of 2008.

^f Order in Council No. XXII of 2002; Ordinance No. XIII of 2008; G.S.I. No. 2 of 2008.

- (c) in Article 26.2, immediately after "based in the Union" insert "or in the Bailiwick of Guernsey, Bailiwick of Jersey or Isle of Man",
- (d) in Article 27.2, immediately after "(EEC) No 2454/93", insert "and under or in accordance with the provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 or any other enactment for the time being in force relating to customs or excise matters in Guernsey",
- (e) references to the competent authorities of or in the Member States shall be construed as references to the Policy Council,
- (f) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (g) references to the Member State concerned shall be construed as references to the Policy Council,
- (h) references to the Union shall be construed as including Guernsey,
- (i) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto,

- (j) references to ports of Member States shall be construed as including any port in Guernsey,
- (k) references to competent customs authorities of Member States shall be construed as including the Chief Officer of Customs and Excise,
- (l) references to nationals of Member States or from the territories of Member States shall be construed as including any person in Guernsey or from Guernsey, and
- (m) references to the law of a Member State shall be construed as including the law of Guernsey.]

NOTE

Section 9 was substituted by the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012, section 1(5), with effect from 27th January, 2012.

Designation of Financial Intelligence Service.

10. The Financial Intelligence Service is designated for the purpose of reporting suspicions under Article 23.1(d) of the EU Regulation.

[Appeals against decisions of Policy Council.

10A. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation, or a decision of the Policy Council not to exercise any of its powers under the EU Regulation, 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 Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council 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 10A was inserted by the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012, section 1(6), with effect from 27th January, 2012.

Interpretation.

11. (1) In this Ordinance, unless the context otherwise requires –

["**advocate**" means an advocate of the Royal Court of Guernsey,]

["**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délégué and a Judge of the Royal Court,]

"**Chief Officer of Customs and Excise**" has the meaning given by section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972,

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

"**customs officer**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"**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,

["**enactment**" includes a Law, an Ordinance and any subordinate legislation,]

"EU Regulation" has the meaning given by section 1,

"Financial Intelligence Service" means the division of the Financial Investigation Unit, comprising those police officers and other persons assigned to the division for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures under Part I of the Disclosure (Bailiwick of Guernsey) Law, 2007^g, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports,

"Financial Investigation Unit" means that branch of the Customs and Excise and Immigration and Nationality Service responsible for the investigation of financial and economic crime,

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

["Judge of the Royal Court" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008^{ga},]

["Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Law, may be validly constituted by the Bailiff sitting alone,]

^g Order in Council No. XVI of 2007; Ordinance No. XXXIX of 2008; No. VII of 2009 and Nos. XIV, XIX and XXXVII of 2010.

^{ga} Order in Council No. XXII of 2008.

"police officer" means –

- (a) a member of the salaried police force of the Island of Guernsey, and
- (b) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey, and

includes a customs officer,

"Policy Council" means the States of Guernsey Policy Council,

"Schedule" means the Schedule to this Ordinance, [...]

[**"subordinate legislation"** means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect, and]

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^h, as amended,

and other terms used in this Ordinance and the EU Regulation shall have the same meaning as in the EU Regulation.

(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.

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

(3) References in this Ordinance to the EU Regulation are references to the EU Regulation as may be further amended from time to time.

NOTES

In section 11, the definitions of the expressions "advocate", "Bailiff", "enactment", "Judge of the Royal Court", "Ordinary Court" and "subordinate legislation" in subsection (1) were inserted, and the word omitted in square brackets after the definition of the expression "Schedule" therein was repealed, by the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012, section 1(7), with effect from 27th January, 2012.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

Repeal.

12. The Iran (Restrictive Measures) (Guernsey) Ordinance, 2007 is repealed.

Citation and commencement.

13. (1) This Ordinance may be cited as the Iran (Restrictive Measures) (Guernsey) Ordinance, 2010.

(2) This Ordinance shall come into force on the 22nd November 2010.

SCHEDULE
INFORMATION

Section 8

1. (1) The Policy 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 Guernsey 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 Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU 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 Policy Council, to the European Commission or to any of the competent authorities of the Member States as identified on the websites listed in Annex V to the EU Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EU 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.