

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

THE GENERAL PURPOSES AND ADVISORY 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 on the Committee by section 41 of the Sark (Reform) Law, 2008^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 Sark in all respects as if Sark, subject to the modifications in section 9, were a Member State.

Infringement of prohibitions in EU Regulation.

2. (1) A person who infringes any applicable prohibition described in Article 2.1(a), (b) or (c), 4, 5.1(a), (b), (c), (d) or (e), 8.1, 9, 11.1, 11.4, 15, 16.2, 16.4, 24.2, 25, 26.1, 28.1 or 28.2 of the EU Regulation is guilty of an offence.

(2) A credit or financial institution which -

(a) infringes the prohibition described in Article 24.1 of the EU Regulation, or

(b) fails to meet the requirements of Article 23 of the EU Regulation,

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

^b Order in Council No. V of 2008.

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

is guilty of an offence.

Undertaking transactions and other activities without authorisation.

3. A person who, except under the authority of a licence granted by the Policy Council under this Ordinance, undertakes any transaction or other activity described in Article 3.1, 5.2(a) or (b), 12.1, 16 or 21.1(c) of the EU Regulation is guilty of an offence.

Licences.

4. (1) Authorisation for the transactions or other activities referred to in section 3, as provided for in the EU Regulation, shall in Sark 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 Article 3.4 or 31.1(a) of 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.

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 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 Sark shall be modified as follows -

^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.

- (a) 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,
- (b) in Articles 2.1(a), 2.1(b), 3.1, 3.2, 24.2(a) and 39(a), (c) and (e), for the words "the Union" substitute "Sark",
- (c) in Articles 3.2, 3.4, 3.5, 3.6, 3.7, 5.2, 5.3, 7.1, 10, 12.1, 12.2, 13, 14(b), 17, 18, 19.1, 19.2, 20.1 and 21.1, the first subparagraph of Article 21.3, Articles 21.4, 22.1 and 22.2, the subparagraph of Article 28.3 and Articles 30, 31.1 and 38.2, references to a competent authority or competent authorities shall be construed as references to the Policy Council,
- (d) in Articles 3.7, 3.8, 7.2, 18(b) and (c), 19.1(b), 19.2(a) and (b), 19.3, 21.4, 33.3, 34 and 37.2 references to the obligation of a Member State to inform, notify or consult shall be construed as references to the obligation of the Policy Council,
- (e) in Article 6(a), for "the territories of the Member States" substitute "Sark",
- (f) in the subparagraph of Article 16.2 commencing with

^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.

the words "It shall be prohibited..", for "in ports of Member States" substitute "in any port in Sark",

(g) in Article 21.3, where -

- (i) the initial order to execute the transfer is given,
- (ii) the payee is resident or the payment service provider is established, or
- (iii) the payer or payee is resident,

in Sark, references to the competent authorities of the Member State shall be construed as references to the Policy Council,

(h) in Article 26.2, immediately after "based in the Union" insert "or in the Bailiwick of Guernsey, Bailiwick of Jersey or Isle of Man",

(i) in Article 27.1 -

- (i) for "the customs territory of the Union" substitute "Sark",
- (ii) for "competent customs authorities of the Member States concerned" substitute "Chief Officer of Customs and Excise", and
- (iii) immediately after "(EEC) No 2454/93", insert "and under or in accordance with the provisions of the customs Laws and excise Laws",

(j) in Articles 28.1 and 28.2 –

(i) for "nationals of Member States or from the territories of Member States" substitute "any person in Sark or from Sark", and

(ii) for "competent customs authorities" substitute "Chief Officer of Customs and Excise", and

(k) Article 38.1 shall not apply.

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.

Interpretation.

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

"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,

"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,

"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,

^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.

"Schedule" means the schedule to this Ordinance, and

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Sark) 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.

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

Repeal.

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

Citation and commencement.

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

(2) This Ordinance shall come into force on the 30th November 2010.

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

SCHEDULE

Section 8

INFORMATION

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 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 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 Sark,
- (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.