

## **The Sudan (Provision of Technical Assistance Etc.) (Sark) Ordinance, 2004**

**THE GENERAL PURPOSES AND FINANCE COMMITTEE** in exercise of the powers conferred by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup>, and on the Committee by section 8A of the Sark (Reform) Law, 1951<sup>b</sup> hereby orders:-

### **Offence of infringing EC Regulation.**

1. A person who infringes, or causes or permits any infringement of Articles 2 or 3 of Council Regulation (EC) No. 131/2004 of the 26<sup>th</sup> January, 2004<sup>c</sup> concerning certain restrictive measures in respect of Sudan ("**the EC Regulation**"), is guilty of an offence.

### **Licences and offences in relation to licences.**

2. (1) Authorisation for the provision of assistance, as provided for in Article 4 of the EC Regulation shall, in Sark, be by way of a written licence granted by the States of Guernsey Policy Council ("**the Council**").

(2) A person who, for the purposes of obtaining, or otherwise in connection with a request for, a licence under subsection (1) -

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

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<sup>a</sup> Order in Council No.III of 1994.

<sup>b</sup> Ordres en Conseil Vol XV, p.215.

<sup>c</sup> OJ. L 21, 28.1.2004.

- (b) recklessly makes any statement or furnishes any document or information which is false in a material particular;

is guilty of an offence; and any licence granted pursuant to the application in respect of which the false statement was made or the false document or information was furnished shall be void ab initio.

(3) A person who contravenes any condition or requirement of a licence granted under this section, is guilty of an offence unless -

- (a) the licence had previously been modified by the Council without that person's consent;
- (b) the alleged contravention would not have been a contravention had the licence not been so modified; and
- (c) that person proves that the contravention took place before he had knowledge that the modification had been made.

(4) A statement made by a person in response to a requirement imposed by or under this Law may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection 2(2) or paragraph 2 of the Schedule to this Ordinance; or

- (b) in proceedings for some other offence where, in giving evidence he makes a statement inconsistent with it.

**Information.**

3. The Schedule to this Ordinance 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.

**Penalties and proceedings.**

4. (1) A person guilty of an offence under section 1, section 2(2) or (3) 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, to a fine, or to both;
- (b) 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) 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 who was 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 body corporate are managed by its members, subsection (3) shall apply 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 Laws applicable.**

5. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>d</sup> shall apply to the detention of any person for an offence under section 1 as it applies to the detention of any person for an offence under the customs or excise Laws.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 shall 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.

**Interpretation.**

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

"**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

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<sup>d</sup> Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

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 uniform scale of fines specified for the time being in section 1 of the Uniform Scale of Fines (Sark) Law, 1989<sup>e</sup>.

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

**Citation.**

7. This Ordinance may be cited as the Sudan (Provision of Technical Assistance Etc.) (Sark) Ordinance, 2004.

**Commencement.**

8. This Ordinance shall come into force on the 17<sup>th</sup> May, 2004.

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<sup>e</sup> Ordres en Conseil Vol XXXI, p. 320

**SCHEDULE**

## Section 3

**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, shall be regarded as being 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 shall compel 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. Any 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 any 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 III 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.

