

ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

The Sudan (Provision of Technical Assistance, etc.) (Guernsey) Ordinance, 2004 *

[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.

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* No. XIX of 2004 (Recueil d'Ordonnances Tome XXIX, p. 457); as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406). This Ordinance has been repealed by the Sudan (Restrictive Measures) (Guernsey) Ordinance, 2014 (No. XXXVIII of 2014).

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ARRANGEMENT OF SECTIONS

1. Offence of infringing EC Regulation.
2. Licences and offences in relation to licences.
3. Information.
4. Penalties and proceedings.
5. Certain provisions of customs and excise Law applicable.
6. Interpretation.
7. Citation.
8. Commencement.

SCHEDULE Information.

(Made on 26th May, 2004.)

The Sudan (Provision of Technical Assistance, etc.) (Guernsey) Ordinance, 2004

THE STATES LEGISLATION 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, hereby orders: –

Offence of infringing EC Regulation.

1. A person who infringes, or causes or permits any infringement of, Article 2 or 3 of Council Regulation (EC) No. 131/2004 of the 26th January, 2004^c 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 Guernsey, be by way of a written licence granted by the States of Guernsey [Policy Council] ("**the Committee**").

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

^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 O.J. L21, 28.1.2004, p. 1.

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 Committee 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 Ordinance may not be used in evidence against him except –

- (a) in proceedings for an offence under subsection (2) of this section or paragraph 2 of the Schedule, or
- (b) in proceedings for some other offence where, in giving evidence, he makes a statement inconsistent with it.

NOTE

In section 2, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), with effect from 6th May, 2004.

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.

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 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.

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.

Interpretation.

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

"Committee" 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,

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

(2) A 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.

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

NOTES

In section 6, the words in square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), with effect from 6th May, 2004.

The functions, rights and liabilities of the Advisory and Finance Committee and of its President arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Policy Council and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

Citation.

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

Commencement.

8. This Ordinance shall come into force on the 13th April, 2004.

SCHEDULE
INFORMATION

Section 3

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) any information or document in his possession or control which 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 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.