

The Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011

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 Reform (Sark) Law, 2008^b, hereby orders:-

Application and infringement of EU Regulation.

1. (1) Council Regulation (EU) No. 753/2011 of the 1st August, 2011^c concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan ("**the EU Regulation**") is, subject to such exceptions, adaptations and modifications as may be specified in this Ordinance, applicable in Sark in all respects as if Sark were a Member State.

(2) A person who infringes, or causes or permits any infringement of, Article 2 or 3 of the EU Regulation is guilty of an offence.

Modification of Regulation.

2. The EU Regulation in its application to Sark is modified as follows -

- (a) Articles 1(i) and 13 shall not apply,
- (b) in Article 5.1, for the words "the competent authorities of the Member States as identified on the websites listed in Annex II, " substitute "the States of Guernsey

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

^b Order in Council Nos. V, VII and XXVII of 2008 and No.XIV of 2010.

^c OJ L 199, 2.8.2011, p.1

Policy Council ("the Policy Council"),

- (c) in Articles 5.2 and 5.5, for the words "the competent authorities of the Member States, as identified on the websites listed in Annex II" substitute "the Policy Council",
- (d) in Articles 5.1 and 5.2, for the words "the Member State concerned" substitute "the Policy Council",
- (e) in Article 5.3 -
 - (i) for the words "the relevant competent authority of the Member State as listed in Annex II" substitute "the Policy Council", and
 - (ii) for the words "The competent authority listed in Annex II" substitute "The Policy Council",
- (f) in Article 6.2 -
 - (i) the reference to the Union shall be construed as including Sark, and
 - (ii) for the words "the relevant competent authority" substitute "the Policy Council",
- (g) in Article 8.1 -
 - (i) in paragraph (a), for the words "the competent authority in the Member State where they are resident or located, as indicated on the websites

listed in Annex II, and shall transmit such information, either directly or through the Member States, to the Commission" substitute "the Policy Council", and

- (ii) in paragraph (b), for the words "that competent authority" substitute "the Policy Council",
- (h) in Articles 5, 9 and 12, 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,
- (i) in Article 14 -
 - (i) in paragraph (a), for "the territory of the Union, including its airspace" substitute "Sark, including its airspace and the territorial waters adjacent thereto",
 - (ii) in paragraph (b), the reference to a Member State shall be construed as including Sark,
 - (iii) in paragraph (d), the reference to the law of a Member State shall be construed as including the law of Sark, and
 - (iv) in paragraph (e), the reference to the Union shall be construed as including Sark.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under Article 5 of the EU Regulation, or a decision of the Policy Council not to exercise its powers under that Article, 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.

Information.

4. 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.

Failure to provide information or to co-operate.

5. A person who, without reasonable excuse, fails to comply with the obligation to provide information to or co-operate with the Policy Council under Article 8 of the EU Regulation is guilty of an offence.

Furnishing of false information etc.

6. A person who in purported compliance with Article 8 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.

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

(a) section 1(2), 5 or 6, or

(b) paragraph 2(b) or (c) of the Schedule,

is liable -

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

(ii) 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 Laws and excise Laws applicable.

8. (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

^d Ordres en Conseil Vol. XXIII, p. 573; Vol. XXXIII, p. 217; and Order in Council No. X of 2004.

Laws.

Interpretation.

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

"Policy 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,

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

"Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court, and

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

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

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

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

Citation.

10. This Ordinance may be cited as the Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011.

Commencement.

11. This Ordinance shall come into force on the 3rd October, 2011.

SCHEDULE

Section 4

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) such information and documents in his possession or control as 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 is 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 item 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 listed in Annex II 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.