

The Iran (Restrictive Measures) (Sark) Ordinance, 2012

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, and of all other powers enabling the Chief Pleas in that behalf, hereby orders:-

Application of EU Regulation.

1. Council Regulation (EU) No. 267/2012 of the 23rd March, 2012^c, concerning restrictive measures against Iran and repealing Regulation (EU) No. 961/2010, ("**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 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.

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.

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

^b Order in Council No. V of 2008 as amended by Order in Council Nos. VI and XXVII of 2008 and No. XIV of 2010.

^c OJ L 88, 24.3.2012, p.1.

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,

that person 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 previously been 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.

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, that person 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 the member 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 customs or excise legislation.

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 is modified as follows -

(a) Article 48.1 shall not apply,

(b) in Article 1(i), the definition of "financial institution"

^d Ordres en Conseil Vol. XXIII, p. 573; as amended by Ordres en Conseil Vol. XXXIII, p. 217 and Recueil d'Ordonnances Tome XXIX, p. 406; there are other amendments not material to this Ordinance.

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,

- (c) in Article 35.2, immediately after "based in the Union" insert "or in the Bailiwick of Guernsey, Bailiwick of Jersey or Isle of Man",
- (d) in Article 36.1, immediately after "(EEC) No 2454/93⁽²⁾", 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 Sark",
- (e) references to competent authority or competent authority of a Member State shall be construed as references to the Policy Council except in Article 32.1(d),
- (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,

^e Ordres en Conseil Vol. XLII (2), p. 766; there are amendments not material to this Ordinance.

^f Ordres en Conseil Vol. XLII (2), p. 1022; there are amendments not material to this Ordinance.

- (g) references to the Member State concerned shall be construed as references to the Policy Council except in Articles 24(d) and 32.1(d) where it shall be construed as referring to Sark,
- (h) references to the Union shall be construed as including Sark,
- (i) references to the territory of the Union and its airspace shall be construed as including Sark, its airspace and the territorial waters adjacent thereto,
- (j) references to ports of Member States shall be construed as including any port in Sark,
- (k) references to competent customs authorities shall be construed as including the Chief Officer of Customs and Excise,
- (l) references to a national of a Member State shall be construed as including a person in Sark or from Sark, and
- (m) references to the law of a Member State shall be construed as including the law of Sark.

Designation of Financial Intelligence Service.

10. The Financial Intelligence Service is designated for the purpose of reporting suspicions under Article 32.1(d) of the EU Regulation.

Appeals against decisions of the Policy Council.

11. (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.

Interpretation.

12. (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-Délegué 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 or excise legislation**" 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,

"**Judge of the Royal Court**" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008^h,

"**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,

"**police officer**" means -

^g Order in Council No. XVI of 2007; Recueil d'Ordonnances Tome XXXIII, pp. 161 and 472; Ordinance Nos. XIV, XIX and XXXVII of 2010.

^h Order in Council No. XXII of 2008.

- (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,

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

"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 (Sark) Law, 1989ⁱ, 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

ⁱ Ordres en Conseil Vol. XXXI, p. 320; as amended by the Uniform Scale of Fines (Sark) (Amendment) Ordinance, 2006.

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.

13. The Iran (Restrictive Measures) (Sark) Ordinance, 2010 is repealed.

Saving.

14. (1) Any licence which was granted by the Policy Council under section 4 of the Iran (Restrictive Measures) (Sark) Ordinance, 2010 and was in effect immediately before the coming into force of this Ordinance has effect as if it were a licence granted by the Policy Council under section 4 of this Ordinance.

(2) Any authorisation in writing issued by the Policy Council relating to a transaction or other activity for which authorisation is required under the EU Regulation, where the transaction in question has not yet taken place immediately before the coming into force of this Ordinance, has effect as if it were a licence granted by the Policy Council under section 4 of this Ordinance.

Citation.

15. This Ordinance may be cited as the Iran (Restrictive Measures) (Sark) Ordinance, 2012.

Commencement.

16. This Ordinance shall come into force on the 11th day of April, 2012.

SCHEDULE

Sections 6 and 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 X 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.