

Island of



Guernsey

Ordinance of the States

XXIX
2014

Made 29th July, 2014

Coming into Operation 30th July, 2014

Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2014

The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2014

THE STATES, in pursuance of their Resolution of the 15th May, 2014^a, and in exercise of the powers conferred on them by sections 18(8) and 81A of, and paragraph 10(1) of Schedule 2 to, the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^b and all other powers enabling them in that behalf, hereby order:-

Amendment of section 1 of the Law.

1. In section 1 of the Law -

(a) for subsection (1), substitute the following subsection-

"(1) In this Law "**terrorism**" means the use or threat of action which -

(a) involves the commission of an offence, or is an act, of a type described in any of the articles of the conventions or other instruments set out in Schedule 10, or

(b) is an action falling within subsection (2), and the use or threat is -

^a Article IX of Billet d'État No. IX of 2014 (Volume 2).

^b Ordres en Conseil Vol. XLII(1), p. 427; Order in Council No. XIII of 2006; No. XIII of 2010; No. XI of 2011 and No. XIV of 2012; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXII, p. 648; Ordinance Nos. XIII, XX and XXXVI of 2010; G.S.I. 16 of 2003 and G.S.I. 41 of 2005.

- (i) designed to influence the government or an international organisation or to intimidate the public or a section of the public, and
- (ii) made for the purpose of advancing a political, religious, racial or ideological cause.",

(b) in subsection (2), delete paragraph (f).

Insertion of section 1A.

2. Immediately after section 1 of the Law, insert the following section -

"Purposes of terrorism: interpretation.

1A. (1) In this Law "**purposes of terrorism**" includes the provision of support to a person involved in terrorism as defined in subsection (2), whether or not such support is provided in relation to a specific act of terrorism.

(2) "**A person involved in terrorism**" is

- (a) any legal or natural person, body, group, organisation or entity, whether or not proscribed under this Law, who -
 - (i) commits, or attempts to commit, acts of terrorism by any means, directly or indirectly, unlawfully and wilfully,

- (ii) participates as an accomplice in acts of terrorism,
 - (iii) organises or directs others to commit acts of terrorism, or
 - (iv) contributes to the commission of acts of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering an act of terrorism or with the knowledge of the intention of the group to commit an act of terrorism,
- (b) any body or entity owned, controlled, directly or indirectly, by any party that comes within paragraph (a), or
 - (c) any legal or natural person, body or entity acting on or behalf of or at the direction of any party that comes within paragraphs (a) and (b).

(3) Support for the purposes of subsection (1) includes the provision of financial support for any purpose."

Amendment of section 12 of the Law.

3. For section 12 of the Law, substitute the following section -

"Obligation to disclose knowledge or suspicion etc. of terrorist financing - non financial services businesses.

12. (1) A person must make a required disclosure if the conditions in subsections (2) and (3) are satisfied.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in terrorist financing or that certain property is or is derived from terrorist property.

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a non financial services business.

(4) Any person who does not make a required disclosure as soon as is practicable after the information or other matter comes to him commits an offence.

(5) A required disclosure is a disclosure of the information or other matter to a prescribed police officer.

(6) But a person does not commit an offence under this section if -

- (a) he does not know or suspect that another person is engaged in terrorist financing or that certain property is or is derived from terrorist property and he has not been provided by his employer with any training required by regulations made under section 49A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (b) if paragraph (a) does not apply, the person was in employment at the time in question and he disclosed the information or other matter to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures,
- (c) he has some other reasonable excuse for not disclosing the information or other matter, or
- (d) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules, guidance or instructions which were at the time concerned -

- (a) made or issued by the Guernsey Financial Services Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the rules, guidance or instructions to the attention of persons likely to be affected by them.

(8) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) But subsection (8) does not apply to information or another matter which is communicated or given with a view to furthering a

criminal purpose.

(10) A disclosure made in good faith to a prescribed police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(11) In subsection (10) "**good faith**" means that the person making the disclosure -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that the person in respect of whom the disclosure is made is engaged in terrorist financing or that certain property is or is derived from terrorist property."

Deletion of section 13 of the Law.

4. Section 13 of the Law is deleted.

Amendment of section 14 of the Law.

5. In section 14(2)(a) of the Law, immediately after the words "other property is", insert "or is derived from".

Amendment of sections 15 and 15A of the Law.

6. For sections 15 and 15A of the Law, substitute the following sections-

"Obligation to disclose knowledge or suspicion etc. of terrorist financing - financial services businesses.

15. (1) A person must make a required disclosure if the conditions in subsections (2) and (3) are satisfied.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in terrorist financing or that certain property is or is derived from terrorist property.

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a financial services business.

(4) A person who does not make a required disclosure as soon as is practicable after the information or other matter comes to him commits an offence.

(5) A required disclosure is a disclosure of the information or other matter -

- (a) to a nominated officer or a prescribed police officer,
- (b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 15C.

(6) But a person does not commit an offence under this section if -

- (a) he has a reasonable excuse for not disclosing the information or other matter,
- (b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances, or
- (c) subsection (7) applies to him.

(7) This subsection applies to a person if -

- (a) he does not know or suspect that another person is engaged in terrorist financing or that certain property is or is derived from terrorist property, and
- (b) he has not been provided by his employer with

such training as is required by regulations made under section 49 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules, guidance or instructions which were at the time concerned -

- (a) made or issued by the Guernsey Financial Services Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the rules, guidance or instructions to the attention of persons likely to be affected by them.

(9) A disclosure to a nominated officer is a disclosure which -

- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and
- (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(10) For the purposes of a disclosure to a nominated officer-

- (a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in the course of the business of which the person carries out a function (whether or not for gain or reward), and
- (b) references to employment are to be construed accordingly.

(11) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(12) But subsection (11) does not apply to information or another matter which is communicated or given with a view to furthering a

criminal purpose.

(13) A disclosure made in good faith to a nominated officer or to a prescribed police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(14) In subsection (13) "**good faith**" means that the person making the disclosure -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that the person in respect of whom the disclosure is made is engaged in terrorist financing or that certain property is or is derived from terrorist property.

Obligation to disclose knowledge or suspicion etc. of terrorist financing - nominated officers in financial services businesses.

15A. (1) A person who is a nominated officer under section 15(9)(a) must make a required disclosure if the conditions in subsections (2) and (3) are satisfied.

(2) The first condition is that he -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or

suspecting,

that another person is engaged in terrorist financing or that certain property is or is derived from terrorist property .

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based,
or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in consequence of a disclosure made under section 15.

(4) Any person who does not make a required disclosure as soon as is practicable after the information or other matter comes to him commits an offence.

(5) A required disclosure is a disclosure of the information or other matter -

(a) to a prescribed police officer,

(b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 15C.

(6) But a person does not commit an offence under this

section if he has a reasonable excuse for not disclosing the information or other matter.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules, guidance or instructions which were at the time concerned -

- (a) made or issued by the Guernsey Financial Services Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the rules, guidance or instructions to the attention of persons likely to be affected by them.

(8) A disclosure made in good faith to a prescribed police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(9) In subsection (8) "**good faith**" means that the person making the disclosure -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that the person in respect of whom the disclosure is made is engaged in terrorist financing or that certain property is or is derived from terrorist property."

Amendment of section 15C of the Law.

7. In section 15C of the Law -

- (a) in subsection (1)(b), immediately after the words "additional information", insert "from any person", and
- (b) in subsection (2)(a), immediately after the words "by the discloser" insert "or any other person".

Amendment of section 40 of the Law.

8. In section 40 of the Law, immediately after subsection (6), insert the following subsection -

"(6A) Subsections (2) and (4) do not apply to a disclosure which is made, other than with a view to furthering a criminal purpose -

- (a) by a client of a professional legal adviser to that adviser in connection with the seeking of legal advice, or
- (b) to any person -
 - (i) in contemplation of legal proceedings, and

- (ii) for the purposes of those proceedings."

Amendment of section 79 of the Law.

9. In section 79 of the Law, in the definition of "terrorist financing", immediately after "Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011", insert ", or section 1(2) of the Afghanistan (Restrictive Measures) (Guernsey) Ordinance 2011, section 1(2) of the Afghanistan (Restrictive Measures) (Alderney) Ordinance 2011, section 1(2) of the Afghanistan (Restrictive Measures) (Sark) Ordinance 2011, section 1(2) of the Al-Qaida (Restrictive Measures) (Guernsey) Ordinance 2013, section 1(2) of the Al-Qaida (Restrictive Measures) (Alderney) Ordinance 2013 or section 1(2) of the Al-Qaida (Restrictive Measures) (Sark) Ordinance 2013".

Interpretation.

10. In this Ordinance, "**the Law**" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, as amended.

Extent.

11. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

12. This Ordinance may be cited as the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2014.

Commencement.

13. This Ordinance shall come into force on the 30th July, 2014.

**Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.**

PRICE £8.00

Printed by Colour Monster Printshop, Lowlands Building, Lowlands Industrial Estate, Guernsey GY3 5XH.