

ORDINANCE OF THE CHIEF PLEAS OF SARK

Ordinance No. XXV of 2014

**The Afghanistan (Restrictive Measures)
(Sark) (Amendment) Ordinance, 2014**

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:-

Amendment of Afghanistan (Restrictive Measures) (Sark) Ordinance, 2014.

1. (1) The Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011^c ("**the Ordinance**") is amended as follows.

(2) In section 1 of the Ordinance, for subsection (2) substitute -

"(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."

(3) For section 2 of the Ordinance, substitute the following section -

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

^b Order in Council Nos. V, VII and XXVII of 2008; No.XIV of 2010 and No. XII of 2011..

^c Folio No. 205.

"Modification of Regulation.

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

- (a) Article 13 shall not apply,
- (b) references to the competent authorities of or in the Member States shall be construed as references to the Policy Council,
- (c) 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,
- (d) subject to paragraph (e), references to the Member State concerned shall be construed as references to the Policy Council,
- (e) references to the Member State concerned shall be construed as including Sark where such references concern the enforcement of decisions or public policy,
- (f) references to the Union shall be construed as including Sark,
- (g) references to the territory of the Union and its airspace shall be construed as including Sark,

its airspace and the territorial waters adjacent thereto,

- (h) references to ports of Member States shall be construed as including any port in Sark, and references to a vessel flying the flag of a Member State as including a Guernsey ship and a Guernsey fishing vessel,
- (i) references to the customs territory of the Union shall be construed as including Sark, and references to any measure of the European Union relating to customs and excise, including for the avoidance of doubt entry and departure of goods to and from Sark, shall be construed where necessary as including customs or excise legislation within the meaning of this Ordinance,
- (j) competent customs authorities of Member States shall be construed as including the Chief Officer of Customs and Excise,
- (k) references to nationals of Member States or from the territories of Member States shall be construed as including any person in Sark or from Sark,
- (l) references to the law of a Member State shall be construed as including the law of Sark, and

- (m) the inclusion of any natural or legal person, group or entity in the lists provided for by Article 2 of the EU Regulation shall be subject to any annulment of the EU Regulation in its application to that person group or entity by the Court of Justice of the European Union and having effect in the European Union for the time being."

(4) Immediately after section 3 of the Ordinance, insert the following section -

"Reporting Obligations.

3A. (1) A relevant institution must inform the Policy Council as soon as practicable if -

- (a) it knows, or has reasonable cause to suspect, that a person -
 - (i) is a designated person, or
 - (ii) has committed an offence under section 1(2), and
- (b) the information or other matter on which the knowledge or reasonable cause for suspicion is based came to it in the course of carrying on its business.

(2) Where a relevant institution informs the Policy Council under subsection (1) it must state -

(a) the information or other matter on which the institution's knowledge or reasonable cause for suspicion is based, and

(b) any information that the institution holds about the person by which the person can be identified.

(3) Subsection (4) applies if -

(a) a relevant institution informs the Policy Council under subsection (1) that it knows, or has reasonable cause to suspect, that a person is a designated person, and

(b) that person is a customer of the institution.

(4) The relevant institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.

(5) A relevant institution that fails to comply with subsection (1) commits an offence."

(5) In section 7 of the Ordinance, immediately after subsection (2) insert the following subsection -

"(2A). A person guilty of an offence under section 3A(5) is liable on summary conviction to imprisonment for a term not exceeding twelve months, to a fine not exceeding level 4 on the uniform scale, or to both."

(6) In section 9 of the Ordinance, delete the definition of "**Ordinary Court**", and in the appropriate places insert the following definitions -

""**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,"

""**designated person**" means a natural or legal person, group or entity included in the list provided for by Article 2 of the EU Regulation, subject to any annulment of the EU Regulation in its application to a particular designated person by the Court of Justice of the European Union and having effect in the European Union for the time being,"

""**enactment**" includes a Law, an Ordinance and any subordinate legislation,"

""**financial services business**" means business which is financial services business for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999",

""**Guernsey fishing vessel**" and "**Guernsey ship**" have the meanings given by section 294(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002,",

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

""**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,",

""**relevant institution**" means -

- (a) a person (whether or not an individual) that carries on financial services business in or from the Bailiwick, or
- (b) a person (not being an individual) who is incorporated or constituted under the law of the Bailiwick or any part thereof and carries on financial services business in any part of the world,", and

""**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,".

Citation.

2. This Ordinance may be cited as the Afghanistan (Restrictive Measures) (Sark) (Amendment) Ordinance, 2014.

Commencement.

3. This Ordinance shall come into force on the 6th September, 2014.