

ORDINANCE OF THE CHIEF PLEAS OF SARK

Ordinance No. XXIV of 2014

**The Russian Federation (Restrictive Measures) (Sark)
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:-

Application and infringement of EU Regulation and EU Decision.

1. (1) Council Regulation (EU) No. 833/2014 of 31st July, 2014^c ("**the EU Regulation**") concerning restrictive measures in view of Russia's actions in destabilising the situation in Ukraine is applicable in Sark in all respects, subject to the modifications in section 2, as if Sark were a Member State.

(2) Article 2.1 of Council Decision 2014/512/CFSP of 31st July, 2014^d ("**the EU Decision**") concerning restrictive measures in view of Russia's actions in destabilising the situation in Ukraine and Articles 6, 7 and 8 of the EU Decision to the extent that they concern the application of Article 2.1 are applicable in Sark in all respects, subject to the modifications in section 2, as if Sark were a Member State.

(3) A person who infringes, or causes or permits any infringement of, any of the prohibitions in or requirements of the EU Regulation is

^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 OJ L 229, 31.7.2014, p.1.

^d OJ L 229, 11.7.2014, p.12.

guilty of an offence.

(4) A person who infringes, or causes or permits any infringement of, the prohibitions in Article 2.1 or 8 of the EU Decision is guilty of an offence.

Modification of EU Regulation and EU Decision.

2. Except where the context requires otherwise, the EU Regulation and Articles 2.1, 6, 7 and 8 of the EU Decision in their application to Sark are modified as follows -

- (a) Articles 8 and 9 of the EU Regulation shall not apply,
- (b) references to the competent authorities of the Member States shall be construed as including a reference to the Home Department,
- (c) references to the obligation of a competent authority or Member State to inform, notify or consult shall be construed as including a reference to an obligation of the Home Department to inform, notify or consult one of Her Majesty's Principal Secretaries of State,
- (d) references to the flag vessels of Member States shall be construed as including a reference to a Guernsey ship and a Guernsey fishing vessel,
- (e) references to the aircraft of a Member State shall be construed as including a reference to aircraft registered in Sark,

- (f) subject to paragraph (g), references to a Member State or the Member State concerned shall be construed as including a reference to the Home Department,
- (g) references to a Member State or the Member State concerned shall be construed as including a reference to Sark where such references concern jurisdiction or the enforcement of decisions or public policy,
- (h) references to the Union shall be construed as including a reference to Sark,
- (i) references to the territory of the Union and its airspace shall be construed as including a reference to Sark, its airspace and the territorial waters adjacent thereto,
- (j) references to the law of a Member State shall be construed as including a reference to the law of Sark, and
- (k) references to a national of a Member State shall be construed as including a reference to a person ordinarily resident in Sark.

Appeals against decisions of Home Department.

3. (1) A person aggrieved by a decision of the Home Department made under the EU Regulation or the EU Decision, or by a decision of the Home Department not to exercise any of its powers under the EU Regulation or the EU Decision, 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 Ordinary Court may -

- (a) set the decision of the Home Department aside and, if the Court considers it appropriate to do so, remit the matter to the Home Department 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 Ordinary 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 Home Department, of information for the purpose of ensuring compliance with the EU Regulation and the EU Decision.

Failure to provide information or to co-operate.

5. A person who, without reasonable excuse, fails to comply with any obligation to provide information to or co-operate with the Home Department in the exercise of any power to request or demand the provision of information, or the co-operation of any person, under any article of the EU Regulation or articles 2.1, 6, 7, and 8 of the EU Decision is guilty of an offence.

Furnishing of false information etc.

6. A person who in purported compliance with any article of the EU Regulation or article 2.1, 6, 7, and 8 of the EU Decision 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(3), 1(4), 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 and Excise Law applicable.

8. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 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.

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

"**advocate**" means an advocate of the Royal Court of Guernsey,

"**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délégué and a Judge of the Royal Court,

"**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,"

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

"**EU Decision**" has the meaning given by section 1(2),

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

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

"Home Department" means the States of Guernsey Home Department,

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

"Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly constituted by the Bailiff sitting alone,

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

^e Ordres en Conseil Vol. XLIV(2), p. 1; Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXXIII, p. 624; Ordinance Nos. XI and LIV of 2012.

^f Order in Council No. XXII of 2008.

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

and other terms used in this Ordinance and in the EU Regulation or in articles 2.1, 6, 7 and 8 of the EU Decision shall have the same meaning as in the EU Regulation or in articles 2.1, 6, 7 and 8 of the EU Decision, as the case may be.

(2) A reference in this Ordinance to an enactment or to the EU Regulation or articles 2.1, 6, 7 and 8 of the EU Decision is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

Citation.

10. This Ordinance may be cited as the Russian Federation (Restrictive Measures) (Sark) Ordinance, 2014.

Commencement.

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

SCHEDULE

Section 4

INFORMATION

1. (1) The Home Department (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 Home Department (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU Regulation or the applicable articles of the EU Decision; 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 Home Department, to the European Commission, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State to ensure compliance with the EU Regulation or the applicable articles of the EU Decision, 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.