

ORDINANCE OF THE CHIEF PLEAS OF SARK

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

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* Sark Ordinance No. 205; as amended by the Afghanistan (Restrictive Measures) (Sark) (Amendment) Ordinance, 2014 (Sark Ordinance No. XXV of 2014); the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016 (Sark Ordinance No. III of 2016). This Ordinance has been repealed by the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020 (G.S.I. No. 162 of 2020).

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(Approved by Chief Pleas on 18th January, 2012.)

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, any prohibition in, or requirement of, the EU Regulation is guilty of an offence.]

NOTE

In section 1, subsection (2) was substituted by the Afghanistan (Restrictive Measures) (Sark) (Amendment) Ordinance, 2014, section 1(2), with effect from 6th September, 2014.

^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.

[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 [Committee],
 - (c) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the [Committee] 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 [Committee],
 - (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.]

NOTES

Section 2 was substituted by the Afghanistan (Restrictive Measures) (Sark) (Amendment) Ordinance, 2014, section 1(3), with effect from 6th September, 2014.

In section 2, the word "Committee" in square brackets, wherever occurring, was substituted by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016, section 1(2), Schedule, paragraph 1, with effect from 1st May, 2016.

Appeals against decisions of [Committee].

3. (1) A person aggrieved by a decision of the [Committee] made under Article 5 of the EU Regulation, or a decision of the [Committee] 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 [Committee] aside and, if the Court considers it appropriate to do so, remit the matter to the [Committee] 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.

NOTE

In section 3, the word "Committee" in square brackets, wherever occurring, was substituted by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016, section 1(2), Schedule, paragraph 1, with effect from 1st May, 2016.

Reporting Obligations.

3A. (1) A relevant institution must inform the [Committee] 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 [Committee] 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 [Committee] 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.]

NOTES

Section 3A was inserted by the Afghanistan (Restrictive Measures) (Sark) (Amendment) Ordinance, 2014, section 1(4), with effect from 6th September, 2014.

In section 3A, the word "Committee" in square brackets, wherever occurring, was substituted by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016, section 1(2), Schedule, paragraph 1, with effect from 1st May, 2016.

Information.

4. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the [Committee], of information for the purpose of ensuring compliance with the EU Regulation.

NOTE

In section 4, the word in square brackets was substituted by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016, section 1(2), Schedule, paragraph 1, with effect from 1st May, 2016.

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 [Committee] under Article 8 of the EU Regulation is guilty of an offence.

NOTE

In section 5, the word in square brackets was substituted by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016, section 1(2), Schedule, paragraph 1, with effect from 1st May, 2016.

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.

[(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.]

(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.

NOTE

In section 7, subsection (2A) was inserted by the Afghanistan (Restrictive Measures) (Sark) (Amendment) Ordinance, 2014, section 1(5), with effect from 6th September, 2014.

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 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,

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

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,]

["**Committee**" means the States of Guernsey Policy & Resources Committee,]

"**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,

["**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,]

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

["**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,]

["**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,]

"**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.

NOTES

In section 9,

the definitions of the expressions "advocate", "Bailiff", "Chief Officer of Customs and Excise", "designated person", "enactment", "financial services business", "Guernsey fishing vessel" and "Guernsey ship", "Judge of the Royal Court", "relevant institution" and "subordinate legislation" in subsection (1) were inserted, and the definition of the expression "Ordinary Court" therein was substituted by the Afghanistan (Restrictive Measures) (Sark) (Amendment) Ordinance, 2014, section 1(6), with effect from 6th September, 2014;

the definition of the expression "Committee" in subsection (1) was inserted and the words omitted in square brackets immediately after the definition of the expression "Ordinary Court" therein were repealed by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016, respectively section 1(1)(a), Schedule, paragraph 1 and section 1(1)(b), Schedule, paragraph 1, with effect from 1st May, 2016.

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.

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

SCHEDULE
INFORMATION

Section 4

1. (1) The [Committee] (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 [Committee] (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 [Committee], 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.

NOTE

In the Schedule, the word "Committee" in square brackets, wherever occurring, was substituted by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016, section 1(2), Schedule, paragraph 1, with effect from 1st May, 2016.
