

# ORDINANCE OF THE CHIEF PLEAS OF SARK

Ordinance No. X of 2017

## **The Transfer of Funds (Sark) Ordinance, 2017**

### ARRANGEMENT OF SECTIONS

1. Modified EU Regulation to have effect in Sark.
2. Provision of information.
3. Monitoring.
4. Reporting.
5. Confidentiality.
6. Offences: contravention of modified EU Regulation or Ordinance.
7. Offences: obstruction and false information etc.
8. Penalties.
9. Criminal liability of directors etc.
10. Criminal proceedings against unincorporated bodies.
11. Power for Commission to make rules, instructions and guidance.
12. Rules, instructions and guidance.
13. Interpretation.
14. Consequential amendments.
15. Repeals.
16. Extent.
17. Citation.
18. Commencement.

### SCHEDULES

- First Schedule: Modifications, exceptions and adaptations to the EU Regulation
- Second Schedule: Consequential amendments

## **The Transfer of Funds (Sark) Ordinance, 2017**

**THE CHIEF PLEAS OF SARK**, in pursuance of their Resolution of the 22<sup>nd</sup> June, 2017, and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup> and all other powers enabling them in that behalf, hereby order:-

### **Modified EU Regulation to have effect in Sark.**

1. Council Regulation (EU) No. 2015/847 of the European Parliament and of the Council of 20 May 2015<sup>b</sup> on information accompanying transfers of funds and repealing Regulation (EC) No. 1781/2006 has full force and effect in Sark subject to the adaptations, exceptions and modifications set out in the First Schedule ("**modified EU Regulation**").

### **Provision of information.**

2. (1) Payment service providers and intermediary payment service providers shall comply fully and without delay with -

- (a) any requirement or warrant to provide information or documents pursuant to section 25, 26, 26A, 27, 28 or 29 of the Banking Law as applied by section 3,
- (b) any requirement to provide information or documents, however expressed, under -

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>b</sup> OJ L 141, 5.6.2015, p.1.

- (i) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>c</sup>,
- (ii) the Proceeds of Crime Law,
- (iii) the Terrorism Law,
- (iv) the Disclosure Law,
- (v) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008<sup>d</sup>,
- (vi) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011<sup>e</sup>,
- (vii) the Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013<sup>f</sup>,

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<sup>c</sup> Order in Council No. VII of 2000; amended by Order in Council No. I of 2000; No. II of 2005; Nos. XVI and XVII of 2007; No. XVII of 2008; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XXXVIII of 2008; No. XV of 2010; No. XXV of 2010; No. XVI of 2014; No. XVI of 2014; and No. IX of 2016.

<sup>d</sup> Order in Council No. XV of 2008; amended by No. XIII of 2010; Ordinance No. XXXII of 2008; Nos. XII and XX of 2015; No. II of 2016; No. IX of 2016; G.S.I. No. 75 of 2008; G.S.I. No. 17 of 2010; G.S.I. No. 83 of 2010; G.S.I. No. 16 of 2013.

<sup>e</sup> Ordres en Conseil No. XI of 2011; amended by Ordinance No. IX of 2016.

<sup>f</sup> Sark Ordinance No. VI of 2014; amended by the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017.

- (viii) the Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011,
  
- (iv) any subordinate legislation under any of the above enactments including, without limitation, regulations under section 49 of the Proceeds of Crime Law, the Disclosure (Bailiwick of Guernsey) Regulations, 2007<sup>g</sup>, and the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007<sup>h</sup>,

where such information or documents comprises information required under the modified EU Regulation or this Ordinance.

(2) In order to facilitate the obtaining, by or on behalf of the Commission, of information for the purpose of ensuring compliance with the modified EU Regulation and this Ordinance, the Commission (or any person authorised by the Commission 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 that person's possession or control as the Commission (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the modified EU Regulation or this Ordinance; 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.

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<sup>g</sup> G.S.I. No. 34 of 2007; amended by G.S.I. No. 50 of 2010; G.S.I. No. 23 of 2011 and G.S.I. No. 50 of 2014.

<sup>h</sup> G.S.I. No. 36 of 2007; amended by G.S.I. No. 27 of 2008; G.S.I. No. 49 of 2010; G.S.I. No. 24 of 2011; and G.S.I. No. 51 of 2014.

(3) No obligation of confidentiality 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 that person's officers, servants or agents of any information or document in compliance with this section.

(4) Nothing in this section 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.

(5) Where a person is convicted of an offence under section 7 for refusing or failing to provide, furnish or produce any information or document, the court may make an order requiring that person, within such period as may be specified in the order, to provide, furnish or produce the information or the document.

(6) The power conferred by this section 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) a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate,

(b) a limited partnership with legal personality, any other person who is a present or past general partner of, or is employed by, the limited partnership, or

- (c) a foundation, any other person who is a present or past foundation official, or is employed by, the foundation,

to provide an explanation of any such document.

**Monitoring.**

3. (1) The Commission must -

- (a) effectively monitor compliance, and
- (b) take such measures as are necessary to ensure compliance,

by payment service providers and intermediary payment service providers with the modified EU Regulation and this Ordinance.

(2) The provisions of sections 25 (power to obtain information and documents), 26 (power of Bailiff to grant warrant), 26A (powers conferred by Bailiff's warrant granted under section 26) and 27 (investigations by inspectors) of the Banking Law shall apply –

- (a) to payment service providers and intermediary payment service providers who send or receive transfers of funds to which the modified EU Regulation applies as they apply to licensed institutions within the meaning of that Law,

- (b) in relation to such information as the Commission may reasonably require for the purpose of effectively monitoring or ensuring compliance with the requirements of the modified EU Regulation or this Ordinance as they apply in relation to such information as the Commission may reasonably require for the performance of its functions under that Law, and
- (c) as if sections 25(5), 25(11) and 27(1) of that Law also allowed the powers referred to in those sections to be exercised if the Commission considers that it is desirable to do so in the interests of effectively monitoring or ensuring compliance with the requirements of the modified EU Regulation or this Ordinance,

except that section 25(10) (information required for determining whether person is a fit and proper person) of that Law shall not apply.

(3) Sections 28 (investigation of suspected offences) and 29 (power of entry in cases of suspected offences) of the Banking Law shall apply in relation to an offence under this Ordinance as they apply in relation to an offence under section 1 or 21 of that Law.

(4) References in any enactment to section 25, 26, 26A, 27, 28 or 29 of the Banking Law shall be construed as including references to those sections as applied by this section.

**Reporting.**

4. (1) The Commission must establish effective mechanisms to encourage the reporting to it of breaches of the modified EU Regulation and of this Ordinance.

(2) The mechanisms referred to in subsection (1) must include at least –

- (a) specific procedures for the receipt of reports on breaches and their follow-up,
- (b) appropriate protection for employees (or persons in a comparable position) of payment service providers and intermediary payment service providers who report breaches committed within that entity, including appropriate internal procedures for such persons to report breaches internally,
- (c) clear rules that ensure confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the payment service provider or intermediary payment service provider, unless disclosure is required under law in the context of further investigations or subsequent judicial proceedings.

(3) Without prejudice to the reporting requirements specified in the modified EU Regulation, any person must notify the Commission of any breach of any requirement of the modified EU Regulation or this Ordinance of which that

person becomes aware.

(4) The Commission may require any of the reporting mechanisms referred to in subsections (1) or (2), any notification referred to in subsection (3) or any other report made under any of the reporting requirements specified in the modified EU Regulation to be in the form and manner determined by it.

(5) A notification or report made in good faith under any of the reporting mechanisms referred to in subsections (1) or (2), under subsection (3), or under any of the reporting requirements specified in the modified EU Regulation does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(6) In subsection (5) "**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 notification or report is made is engaged in a breach of the modified EU Regulation or this Ordinance.

### **Confidentiality.**

5. No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance or compliance with a requirement, request or warrant referred to in section 2 or in a notification made under section 4 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 the capacity of a servant or agent of another person may not give consent for the purposes of this paragraph but such consent may instead be given by any person who is entitled to that information or to possession of that document in that person's own right,
- (b) to any person empowered under a requirement, request or warrant referred to in section 2 or under section 4 to request that it be furnished or produced, or to any person holding or acting in any office under or in the service of the Crown in respect of Sark,
- (c) for the purposes of the prevention, detection, investigation or prosecution of money laundering or terrorist financing or any other crime, whether in Sark or elsewhere,
- (d) for the purposes of ensuring compliance with the modified EU Regulation or this Ordinance,
- (e) if the information or document at the time of the disclosure is or has already been made available to the public,

- (f) for the purposes of seeking advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, where the disclosure to that person of such information or documentation appears to be necessary to ensure that that person is properly informed as to the matters on which that person's advice is sought,
- (g) in the interests of customers or in the public interest,
- (h) to enable any authority responsible for preventing and combatting money laundering or terrorist financing to carry out its functions or to investigate matters of relevance to its functions, or
- (i) for the purpose of enabling or assisting any supervisory or investigatory authority which appears to exercise, in a place outside the Bailiwick, functions corresponding to any of the functions of the Commission or the Guernsey Border Agency (including the Financial Intelligence Service).

**Offences: contravention of modified EU Regulation or Ordinance.**

6. (1) A person who, without reasonable excuse, contravenes any provision of the modified EU Regulation or any provision of sections 2 to 4 of this Ordinance is guilty of an offence.

(2) A person who without reasonable excuse discloses any

information or document, or who without reasonable excuse causes or permits the disclosure of any information or document, in contravention of section 5 of this Ordinance is guilty of an offence.

**Offences: obstruction and false information etc.**

7. (1) A person who in purported compliance with any provision of, or requirement under, the modified EU Regulation or this Ordinance -

- (a) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(2) A person who with intent to evade any provision of, or requirement under, the modified EU Regulation or this Ordinance destroys, mutilates, defaces, secretes or removes any document is guilty of an offence.

(3) A person who without reasonable excuse, proof of which lies on that person, obstructs or fails to give all reasonable assistance to any person in the exercise or purported exercise of a function referred to in section 2 or under, or applied by, section 3 is guilty of an offence.

(4) A person who, without reasonable excuse, proof of which lies on that person, refuses or fails to comply with any requirement, request or warrant to provide information or documents referred to in section 2 or under, or applied by, section 3 is guilty of an offence.

**Penalties.**

8. (1) A person guilty of an offence under section 6(1) or 7 of this Ordinance is liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale of fines, or to both.

(2) A person guilty of an offence under section 6(2) of this Ordinance is liable –

- (a) on conviction on indictment, to imprisonment for a

term not exceeding two years, or to a fine, or to both,

- (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 of fines, or to both.

(3) The penalties stipulated by this Ordinance are applicable notwithstanding the provisions of section 11 of the Reform (Sark) Law, 2008<sup>i</sup>.

**Criminal liability of directors etc.**

9. (1) Where an offence under this Ordinance is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a body corporate, any director, controller, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in any capacity described in paragraphs (a) to (c),

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<sup>i</sup> Order in Council No. V of 2008. There are other amendments not relevant to this enactment.

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

(3) In this section and in section 2(6) -

**"body corporate"** means a body of persons, of whatever description, incorporated with or without limited liability in any part of the world,

**"foundation"** means -

- (a) a foundation created under the Foundations (Guernsey) Law, 2012<sup>j</sup>, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (however named),

**"foundation official"** means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and

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<sup>j</sup> Order in Council No. I of 2013; amended by Ordinance No. IX of 2016.

- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a) of this definition, and

**"general partner"** means –

- (a) in relation to a limited partnership falling within paragraph (a) of the definition in this section of **"limited partnership"**, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>k</sup>, and
  - (b) in relation to a limited partnership falling within paragraph (b) of the definition in this section of **"limited partnership"**, a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition.
- (4) In this section and in section 10 **"limited partnership"** means -
- (a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited

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<sup>k</sup> Ordres en Conseil Vol. XXXVI, p. 264; amended by Vol. XXXVI, p. 571; Order in Council No. IV of 2001; No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 89 of 2008; and G.S.I. N0. 51 of 2016.

Partnerships (Guernsey) Law, 1995, or

(b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which-

(i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

(ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

**Criminal proceedings against unincorporated bodies.**

10. (1) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) in the case of a partnership (not being a limited

partnership with legal personality or a limited liability partnership), any partner,

(b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

(c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Ordinance must be paid from the funds of the body.

(4) In this section "**limited liability partnership**" means -

(a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey)

Law, 2013<sup>1</sup>, or

- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a limited liability partnership described in paragraph (a).

**Power for Commission to make rules, instructions and guidance.**

11. (1) The Commission may make rules, instructions and guidance for the purposes of this Ordinance and the modified EU Regulation.

(2) Any court shall take the rules, instructions and guidance into account in determining whether or not any person has complied with this Ordinance and the modified EU Regulation.

**Rules, instructions and guidance.**

12. (1) Any, rules, instructions or guidance under this Ordinance -

- (a) may be amended or repealed by subsequent rules, instructions or guidance, as the case may be, and
- (b) may contain consequential, incidental, supplemental and transitional provisions.

(2) Any power conferred by this Ordinance to make rules, instructions or guidance may be exercised -

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<sup>1</sup> Order in Council No. VI of 2014; amended by Ordinance No. XII of 2015; and No. IX of 2016.

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes, and
  - (iii) any such provision either unconditionally or subject to any conditions specified in the Regulations, order, rules, instructions or guidance.

**Interpretation.**

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

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

"**the Banking Law**" means the Banking Supervision (Bailiwick of

Guernsey) Law, 1994<sup>m</sup>,

"**British Islands**" means the United Kingdom, the Channel Islands and the Isle of Man,

"**the Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>n</sup>,

"**Committee of the Chief Pleas of Sark**" includes any council, department, board or authority (however called) thereof, including the Douzaine,

"**the Disclosure Law**" means the Disclosure (Bailiwick of Guernsey) Law, 2007<sup>o</sup>,

"**document**" includes information recorded in any form (including, without limitation, in electronic form),

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<sup>m</sup> Ordres en Conseil Vol. XXXV(1), p. 271; amended by Order in Council Nos. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Ordinance No. XXXIII of 2003; Nos. XII, XX and XXXIX of 2015; Nos. II and IX of 2016; and G.S.I. No. 1 of 2008; G.S.I. No's. 35 and 83 of 2010.

<sup>n</sup> Ordres en Conseil Vol. XXX, p. 243; amended by Orders in Council No. XXXI, p. 278; No. XX of 1991; No. XIII of 1994; No. II of 1997; Nos. XVII and XXI of 2002; Nos. III and XXII of 2003; Nos. XIX, XXIII and XXIV of 2008; No. XIX of 2010; No. III of 2013; No. I of 2015; Ordinance No. XXXIII of 2003; No. XXXIV of 2005; Nos. XII, XX and XXXIX of 2015; Nos. II, IX and XXII of 2016; and G.S.I. No. 29 of 2009.

<sup>o</sup> Order in Council No. XVI of 2007; amended by Ordinance No. XXXIX of 2008; No. VII of 2009; No. XIV of 2010; No. XIX of 2010; No. XXXVII of 2010; No. XVI of 2014; No. LIII of 2014; No. XXXIX of 2015; and No. IX of 2016.

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**the EU Regulation**" means Council Regulation (EU) No. 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds,

"**the Financial Intelligence Service**" means the division of the Guernsey Border Agency, 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 Law and Part III of the Terrorism Law, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports,

"**the Guernsey Border Agency**" means the organisation also known or referred to as "the Customs and Excise and Immigration and Nationality Service" including –

- (a) its Chief Officer and any officer acting by or under the authority of the Chief Officer, and
- (b) any other individual working, including on a temporary basis, for such organisation whether under a contract of employment, a contract for services or otherwise,

**"the modified EU Regulation"** means the EU Regulation as modified by section 1,

**"the Proceeds of Crime Law"** means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>P</sup>,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

**"the Terrorism Law"** means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>Q</sup>,

**"the uniform scale of fines"** means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>R</sup>,

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<sup>P</sup> Order in Council No. VIII of 1999; amended by Order in Council No. I of 2000; No. II of 2005; No. XV of 2007; No. XIII of 2010; No. XI of 2011; Recueil d'Ordonnances Tome XXVIII, p. 266; Ordinance No. XII of 2002; No. XXXIII of 2003; No. XLVII of 2007; No. XXXVII of 2008; Nos. XVI and XXXIV of 2010; No. XVII of 2014; No. IX of 2016; G.S.I. No. 56 of 1999; G.S.I. Nos. 4 and 27 of 2002; G.S.I. No. 33 of 2007; G.S.I. Nos. 48 and 73 of 2008; G.S.I. No. 12 of 2010; G.S.I. No. 14 of 2013; and G.S.I. No. 45 of 2016.

<sup>Q</sup> Order in Council No. XVI of 2002; amended by Order in Council No. VII of 2005; No. XIII of 2006; No. XIII of 2010; No. XI of 2011 and No. XIV of 2012; Ordinance No. XXXIII of 2003; No. XLVI of 2007; Nos. XIII, XX and XXXVII of 2010; No. XXIX of 2014; No. LIV of 2014; No. IX of 2016; G.S.I. No. 16 of 2003; No. 41 of 2005; and G.S.I. No. 5 of 2017.

<sup>R</sup> Ordres en Conseil Vol. XXXI, p. 278; amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89; Ordinance No. XXIX of 2006; and No. XXIX of 2013.

and other terms used in this Ordinance shall have the same meaning as in the modified EU Regulation.

(2) A reference in this Ordinance to an enactment or to a Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 (including the EU Regulation) is a reference thereto as from time to time amended, repealed and re-enacted (in either case, with or without modification), extended or applied.

(3) For the purposes of this Ordinance references to Euros shall be converted to pounds sterling or any other relevant currency at the relevant rate of conversion from time to time published in the "C" Series of the Official Journal of the European Communities.

(4) The Interpretation (Guernsey) Law, 1948<sup>s</sup> applies to the interpretation of this Ordinance.

#### **Consequential amendments.**

**14.** (1) In each of the enactments set out in the Second Schedule to this Ordinance, for every reference to "Transfer of Funds (Sark) Ordinance, 2007" substitute "Transfer of Funds (Sark) Ordinance, 2017".

(2) For the avoidance of doubt, this section does not constitute a contrary intention to section 19(1) of the Interpretation (Guernsey) Law, 1948, as that Law applies to the interpretation of this Ordinance.

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<sup>s</sup> Ordres en Conseil Vol. XIII, p. 355.

**Repeals.**

15. The Transfer of Funds (Sark) Ordinance, 2007 is repealed.

**Extent.**

16. This Ordinance has effect in the Island of Sark.

**Citation.**

17. This Ordinance may be cited as the Transfer of Funds (Sark) Ordinance, 2017.

**Commencement.**

18. This Ordinance shall come into force on the 26<sup>th</sup> June 2017.

FIRST SCHEDULE

Section 1

MODIFICATIONS, EXCEPTIONS AND ADAPTATIONS TO THE EU  
REGULATION

PART I  
GENERAL MODIFICATIONS

**General modifications.**

1. The following general modifications apply throughout the EU Regulation, unless the context requires otherwise, subject to the following provisions of this Schedule –

- (a) a reference to the competent authority or competent authorities shall be construed so as to include –
  - (i) the Commission in articles 8(2), 12(2), 21 and 22, or
  - (ii) the Commission and the Guernsey Border Agency (including the Financial Intelligence Service) in article 17(4),
- (b) a reference to a Member State shall be construed so as to include –
  - (i) Sark, in articles 14, 17, 21 and 22, and

- (ii) the British Islands, in article 2,
- (c) a reference to the Union shall be construed so as to mean –
  - (i) Sark, in articles 1 and 2, and
  - (ii) the British Islands, in articles 5, 6, 7 and 11.

**General disapplications.**

- 2. The following provisions of the EU Regulation do not apply in Sark –
  - (a) Article 18 (Specific provisions), Article 19 (Publication of sanctions and measures), and Article 20 (Application of sanctions and measures by the competent authorities),
  - (b) Chapter V (Implementing Powers),
  - (c) Chapter VI (Derogations),
  - (d) Chapter VII (Final Provisions), and
  - (e) the statement of application and effect which appears after Article 27.

PART II  
MODIFICATIONS OF PARTICULAR PROVISIONS

**Modifications of particular provisions.**

3. In its application to Sark the provisions of the EU Regulation are further modified as set out in the following provisions of this Schedule.

**Article 2: Scope.**

4. In Article 2 (scope) –
- (a) in paragraph (4)(b), a reference to a public authority shall be construed as to include any Committee of the Chief Pleas of Sark, and
  - (b) paragraph (5) is omitted.

**Article 3: Definitions.**

5. In Article 3 (definitions) –
- (a) in the definition of "terrorist financing" in Article 3(1) for "Article 1(5) of Directive (EU) 2015/849" substitute "section 79(1) of the Terrorism Law",
  - (b) in the definition of "money laundering" in Article 3(2) for "Article 1(3) and (4) of Directive (EU) 2015/849" substitute "section 17(1) of the Disclosure Law",
  - (c) in the definition of "payer" in Article 3(3) before the word "person" insert "natural or legal",

- (d) in the definition of "payee" in Article 3(4) for "person that is" substitute "natural or legal person or legal arrangement identified by the payer as",
- (e) in the definition of "batch file transfer" in Article 3(10) after the word "transmission" insert "being sent to the same payment service provider or intermediary payment service provider, but which may or may not be ultimately intended for different persons",
- (f) after the definition of "person-to-person transfer of funds" in Article 3(12) insert –
  - "(13) "British Islands" means the United Kingdom, the Channel Islands and the Isle of Man;
  - (14) "Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;
  - (15) "Disclosure Law" means the Disclosure (Bailiwick of Guernsey) Law, 2007;
  - (16) "electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of

making payment transactions (which means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee), and which is accepted by a natural or legal person or legal arrangement other than the electronic money issuer;

(17) "Financial Intelligence Service" means the division of the Guernsey Border Agency, 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 Law and Part III of the Terrorism Law, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports;

(18) "Guernsey Border Agency" means the organisation also known or referred to as "the Customs and Excise and Immigration and Nationality Service" including –

(a) its Chief Officer and any officer acting by or under the authority of the Chief Officer, and

- (b) any other individual working, including on a temporary basis, for such organisation whether under a contract of employment, a contract for services or otherwise;
  
- (19) "legal arrangement" means an express trust or any other vehicle whatsoever which has a similar legal effect;
  
- (20) "police officer" means –
  - (a) the Constable, the Assistant Constable, the Vingtenier, a member of the salaried police force of the Island of Guernsey, and within the limits of the member's jurisdiction, a special constable appointed by the Court of the Seneschal, and
  
  - (b) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,
  
- (21) "Proceeds of Crime Law" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;

- (22) "straight through processing" means payment transactions that are conducted electronically without the need for manual intervention; and
- (23) "Terrorism Law" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002."

**Article 4 : Information accompanying transfer of funds.**

- 6. In Article 4 (information accompanying transfer of funds) –
  - (a) in paragraph (1)(c) for "official personal document" substitute "national identity",
  - (b) in paragraph (5) –
    - (i) for sub-paragraph (a) substitute "a payer's identity has been verified and the information obtained pursuant to that verification has been stored in accordance with any relevant requirements, in or under the Proceeds of Crime Law, including any regulations for the time being in force under section 49 of the Proceeds of Crime Law, relating to the verification of the identity of the payer, and the keeping of information obtained by that verification; or", and
    - (ii) for sub-paragraph (b) substitute "the payer is an

existing customer and it is appropriate to verify that customer on a risk-sensitive basis, including at times when the relevant circumstances of the customer change."

**Article 5 : Transfer of funds within the Union.**

7. In Article 5 (transfer of funds within the Union) in paragraph (2) after the words "intermediary payment service provider" insert "or from any police officer, the Financial Intelligence Service, the Commission or from any other appropriate competent authorities".

**Article 7 : Detection of missing information on the payer or the payee.**

8. In Article 7 (detection of missing information on the payer or the payee) –

- (a) in paragraphs (1) and (2) for "effective procedures" substitute "effective measures, including effective procedures",
- (b) in paragraph (3) after the words "shall verify the" insert "identity of the payee, including the", and
- (c) in paragraph (5) –
  - (i) for sub-paragraph (a) substitute "a payee's identity has been verified and the information obtained pursuant to that verification has been stored in accordance with any relevant requirements, in or under the Proceeds of

Crime Law including any regulations for the time being in force under section 49 of the Proceeds of Crime Law, relating to the verification of the identity of the payee, and the keeping of information obtained by that verification; or", and

- (ii) for sub-paragraph (b) substitute "the payee is an existing customer and it is appropriate to verify that customer on a risk-sensitive basis, including at times when the relevant circumstances of the customer change".

**Article 8 : Transfer of funds with missing or incomplete information on the payer or the payee.**

9. In Article 8(1) (transfer of funds with missing or incomplete information on the payer or the payee) –

- (a) for "procedures, including procedures" substitute "policies and procedures, including any relevant policies and procedures", and
- (b) for "Article 13 of Directive (EU) 2015/849" substitute "or under the Proceeds of Crime Law, including any regulations for the time being in force under section 49 of the Proceeds of Crime Law."

**Article 9 : Assessment and reporting.**

10. In Article 9 (assessment and reporting) –

- (a) for "Financial Intelligence Unit (FIU)" substitute "Financial Intelligence Service", and
- (b) for "Directive (EU) 2015/849" substitute "Part I of the Disclosure Law and Part III of the Terrorism Law".

**Article 11 : Detection of missing information on the payer or the payee.**

11. In Article 11 (detection of missing information on the payer or the payee) –

- (a) in paragraph (1) for "effective procedures" substitute "effective measures, including effective procedures", and
- (b) in paragraph (2) for "effective procedures" substitute "effective measures, including effective procedures, which are consistent with straight-through processing".

**Article 12 : Transfers of funds with missing information on the payer or the payee.**

12. In Article 12(1) (transfers of funds with missing information on the payer or the payee) after the words "effective risk-based" insert "policies and".

**Article 13 : Assessment and reporting.**

13. In Article 13 (assessment and reporting) –

- (a) for "FIU" substitute "Financial Intelligence Service",

and

- (b) for "Directive (EU) 2015/849" substitute "Part I of the Disclosure Law and Part III of the Terrorism Law".

**Article 14 : Provision of information.**

14. In Article 14 (provision of information) –

- (a) omit ", including by means of a central contact point in accordance with Article 45(9) of Directive (EU) 2015/849, where such a contact point has been appointed," and
- (b) a reference to the authorities responsible for preventing and combating money laundering or terrorist financing shall be construed so as to include the Commission and the Guernsey Border Agency (including the Financial Intelligence Service).

**Article 15: Data protection.**

15. In Article 15 (data protection) –

- (a) in paragraph (1) –
  - (i) for "Directive 95/46/EC, as transposed into national law" substitute "the Data Protection (Bailiwick of Guernsey) Law, 2001", and
  - (ii) omit the second sentence, and

- (b) in paragraph (3) for "Article 10 of Directive 95/46/EC" substitute "the Data Protection (Bailiwick of Guernsey) Law, 2001".

**Article 16: Record retention.**

16. In Article 16 (record retention) –

- (a) in paragraph (1) –
  - (i) omit the first sentence, and
  - (ii) after the words "period of" insert "at least", and
- (b) omit paragraphs (2) and (3).

**Article 17: Administrative sanctions and measures.**

17. In Article 17 (administrative sanctions and measures) –

- (a) in paragraph (1) –
  - (i) in the second sentence delete "and shall be consistent with those laid down in accordance with Chapter VI, Section 4, of Directive (EU) 2015/849", and
  - (ii) omit the fourth sentence,
- (b) omit paragraph (3),

- (c) in paragraph (4) for the second sentence substitute "Competent authorities shall cooperate closely and coordinate their action when dealing with cross border cases.",
- (d) in paragraph (5) for "referred to in Article 18" substitute "of the provisions of this Regulation",
- (e) in paragraph (6) for "one of the breaches referred to in Article 18" substitute "a breach of one of the provisions of this Regulation", and
- (f) omit paragraph (7).

**Article 22: Monitoring.**

- 18. In Article 22 (monitoring) omit paragraph (2).

## SECOND SCHEDULE

Section 14

### CONSEQUENTIAL AMENDMENTS

1. Financial Services Commission (Bailiwick of Guernsey) Law, 1987
2. Protection of Investors Law (Bailiwick of Guernsey) Law, 1987<sup>t</sup>
3. Banking Supervision (Bailiwick of Guernsey) Law, 1994
4. Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>u</sup>
5. Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>v</sup>
6. Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>w</sup>

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<sup>t</sup> Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXII, p. 324; Vol. XXXV(1), p. 271; Vol. XXXVI, p. 264; Vol. XXXVII, p. 24; Order in Council No. XVII of 2002; Nos. XV and XXXII of 2003; No. XVIII of 2008; Nos. XIII and XX of 2010; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Tome XXVIII, pp. 51 and 87; Ordinance No. XXXIII of 2003; No. XXXI of 2008; No. VII of 2009; Nos. XII, XX and XXXIX of 2015; Nos. II, IX and XXIX of 2016; and G.S.I. No. 83 of 2010.

<sup>u</sup> Order in Council No. I of 2001; amended by No. I of 2000; No. XIV of 2003; No. XVI of 2007; Nos. VIII and XXV of 2008; Nos. XIII and XIX of 2010; No. I of 2013; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. VII of 2009; Nos. XII and XXXIX of 2015; Nos. II and IX of 2016; G.S.I. No. 3 of 2008; G.S.I. No. 83 of 2010; G.S.I. No. 4 of 2013.

<sup>v</sup> Order in Council No. XXII of 2002; amended by No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XIII of 2008; No. IX and XXXII of 2010; Nos. XII and XXXIX of 2015; No. II of 2016; No. IX of 2016; G.S.I. No. 2 of 2008; G.S.I. Nos. 16 and 83 of 2010.

<sup>w</sup> Order in Council No. XXI of 2002; amended by No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XII of 2008; No. LI of 2008; No. VIII of 2010; No. XXXI of 2010; No. XXXVI of 2011; No. LV of 2014; No. XII of 2015; No. XXXIX of

7. Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007<sup>x</sup>
8. Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008<sup>y</sup>
9. Prescribed Businesses (Bailiwick of Guernsey) Law, 2008<sup>z</sup>
10. Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008

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2015; No. II of 2016; No. IX of 2016; G.S.I. No. 33 of 2004; G.S.I. No. 4 of 2008; G.S.I. Nos. 15 and 83 of 2010; G.S.I. No. 68 of 2014; G.S.I. No. 121 of 2015.

<sup>x</sup> G.S.I. No. 33 of 2007; amended by Order in Council No. XV of 2008; No. XI of 2011; G.S.I. No. 48 of 2008; No. 30 of 2009; No. 13 of 2010; No. 58 of 2010; Nos. 13 and 20 of 2013; and No. 47 of 2014.

<sup>y</sup> Ordinance No. II of 2008; amended by Order in Council No. XIII of 2010 and Ordinance No. XXX of 2010.

<sup>z</sup> Order in Council No. XII of 2009; amended by Ordinance No. XXXIX of 2015; No. II of 2016; and No. IX of 2016.