

ORDINANCE OF THE CHIEF PLEAS OF SARK

ENTITLED

The Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013 *

[CONSOLIDATED TEXT]

NOTE

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* Sark Ordinance No. VI of 2014; as amended by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016 (Sark Ordinance No. III of 2016); the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017 (Sark Ordinance No. VIII of 2017). This Ordinance has been repealed by the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020 (G.S.I. No. 162 of 2020).

ORDINANCE OF THE CHIEF PLEAS OF SARK

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The Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013

ARRANGEMENT OF SECTIONS

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3. Appeals against decisions of Committee.
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(Approved by Chief Pleas on 22nd January, 2014.)

The Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013

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 Regulations.]

1. (1) Subject to the modifications in section 2 –
 - (a) Council Regulation (EC) No. 881/2002 of the 27th May, 2002 concerning restrictive measures against the Al-Qaida network ("**the first Regulation**"), and
 - (b) Council Regulation (EU) 2016/1686 of the 20th September, 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them ("**the second Regulation**"), have full force and effect in Sark.

(2) A person who contravenes, or causes or permits any contravention of, any of the prohibitions in or requirements of the EU Regulations is guilty of an offence.]

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

^b Order in Council Nos. V, VI and XXVII of 2008 and No. XIV of 2010.

NOTE

Section 1 was substituted by the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017, section 1(a), with effect from 4th January, 2017.

[Modification of EU Regulations].

2. Except where the context requires otherwise, [the modifications referred to in section 1 are] as follows –

- (a) [Article 10 of the first Regulation and Articles 15 and 16 of the second Regulation] 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 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,
- (h) references to the territory of the Union and its airspace shall be construed as including Sark, its airspace and the territorial waters adjacent thereto,
- (i) references to the 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,
- (j) references to 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 [any of the lists provided for by the first Regulation or the second Regulation shall be subject to any annulment of the first Regulation or the second Regulation as the case may be] 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

In section 2,

the words in, first, square brackets the marginal note thereto, second, in the first pair of square brackets, third, in square brackets in paragraph (a) and, fourth, in square brackets in paragraph (m) were substituted by the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017, respectively section 1(b)(i), section 1(b)(ii), section 1(b)(iii) and section 1(b)(iv), with effect from 4th January, 2017;

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

Appeals against decisions of [Committee].

3. (1) A person aggrieved by a decision of the [Committee] made under [the EU Regulations in their application] to Sark, or a decision of the [Committee] not to exercise any of its powers [under the EU Regulations], 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 [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 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.

NOTES

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 2, with effect from 1st May, 2016;

the words in, first, the second and, second, the fourth pairs of square brackets in subsection (1) were substituted by the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017, respectively section 1(c)(i) and section 1(c)(ii), with effect from 4th January, 2017.

Reporting obligations.

4. (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), (2) or (4) is guilty of an offence.

NOTE

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

Information.

5. 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 Regulations].

NOTES

In section 5,

the word in the first pair of square brackets was substituted by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016, section 1(2), Schedule, paragraph 2, with effect from 1st May, 2016;

the words in the second pair of square brackets were substituted by the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017, section 1(d), with effect from 4th January, 2017.

Failure to provide information or to co-operate.

6. A person who, without reasonable excuse, fails to comply with any

obligation to provide information to or co-operate with the [Committee] in the exercise of any power to request or demand the provision of information, or the cooperation of any person, under any article of [the EU Regulations] is guilty of an offence.

NOTES

In section 6,

the word in the first pair of square brackets was substituted by the Sanctions Ordinances (Amendment) (Sark) Ordinance, 2016, section 1(2), Schedule, paragraph 2, with effect from 1st May, 2016;

the words in the second pair of square brackets were substituted by the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017, section 1(d), with effect from 4th January, 2017.

Furnishing of false information etc.

7. A person who in purported compliance with any article of the EC 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.

NOTE

In section 7, the words in square brackets were substituted by the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017, section 1(d), with effect from 4th January, 2017.

Penalties and proceedings.

8. (1) A person guilty of an offence under –
- (a) section 1(2), 6 or 7, 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 section 4(5) or 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.

9. (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 customs or excise legislation.

(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 customs or excise legislation.

Interpretation.

10. (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,

"**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,

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly,

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

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

"customs or excise legislation" means 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 lists provided for by Article 2 of [the EU Regulations], subject to any annulment of [the EU Regulations] 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 Regulations"** means the first Regulation and the second Regulation",]

"financial services business" has the meaning given by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^e,

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

^e Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005; No. XV of 2007 and No. XIII of 2010; Recueil d'Ordonnances Tome XXVIII, pp. 266 and 274; Tome XXIX, pp. 112 and 406 and Tome XXXII, p. 666; Tome XXXIII, p. 157; Ordinance Nos. XVI and XXXIV of 2010; G.S.I. No. 27 of 2002; No. 43 of 2006; No. 33 of 2007; Nos. 48 and 73 of 2008; No. 12 of 2010 and No. 14 of 2013.

^f Order in Council No. VIII of 2004; there are amendments not material to this

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

"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,

[...]

"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, 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^h,

Ordinance.

^g Order in Council No. XXII of 2008.

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

and other terms used in this Ordinance and [the EU Regulations] shall have the same meaning as in [the EU Regulations].

(2) A reference in this Ordinance to an enactment or to [the EU Regulations] is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

NOTES

In section 10,

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 2 and section 1(1)(b), Schedule, paragraph 2, with effect from 1st May, 2016;

the definition of the expression "EU Regulations" in subsection (1) was substituted and the words "the EU Regulations" in square brackets, wherever occurring, were substituted by the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017, respectively section 1(e)(i) and section 1(e)(ii), with effect from 4th January, 2017.

Repeals.

11. The Al-Qaida and Taliban (Freezing of Funds) (Sark) Ordinance, 2011ⁱ, is repealed.

Citation.

12. This Ordinance may be cited as the Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013.

Commencement.

ⁱ Made by the General Purposes and Advisory Committee on 1st February, 2011.

13. This Ordinance shall come into force on the 2nd October, 2013.

REPEALED

SCHEDULE
INFORMATION

Section 5

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 Regulations]; 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, to any of the competent authorities listed in or under [the EU Regulations] 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 Regulations], 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.

NOTES

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 2, with effect from 1st May, 2016;

the words "the EU Regulations" in square brackets, wherever occurring, were substituted by the Al-Qaida (Restrictive Measures) (Sark) (Amendment) Ordinance, 2017, section 1(e), with effect from 4th January, 2017.

REPEALED