

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023

Made 5th June, 2023

Coming into operation 8th July, 2023

Approved by the States 5th July, 2023

THE POLICY & RESOURCES COMMITTEE in exercise of the powers conferred upon it by sections 49AA(4) and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^a, and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Amendment of the Proceeds of Crime Law.

1. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is amended as follows.

(2) In Schedule 3 -

(a) in paragraph 1 -

(i) in subparagraph (1), for "subparagraph (2)" substitute "subparagraphs (2) and (3)",

^a Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

- (ii) in subparagraph (2), for "This Schedule" substitute "Save in the case of a business of the type described in paragraph 6 of Schedule 2, this Schedule", and
- (iii) after subparagraph (2), insert the following subparagraph -

"(3) Paragraphs 2, 3, 10, and 15 of this Schedule do not apply to a business of the type described in paragraph 6 of Schedule 2, but an individual carrying on by way of business the activities described in paragraph 6 of Schedule 2 who is under an obligation to register with the Commission under paragraph 2 of Schedule 5 must have regard to -

- (a) any relevant rules and guidance in the Handbook,
- (b) any relevant notice or instruction issued by the Commission under this Law, and
- (c) the NRA,

in understanding, for the purposes of this Schedule, its money laundering and terrorist financing risks, and determining, for the purposes of this Schedule, what constitute appropriate measures to manage and mitigate risks, and what constitutes a low or high risk business relationship.",

(b) in paragraph 6 -

- (i) for subparagraph (1), substitute -

"(1) Where a specified business is required to carry out customer due diligence in relation to a business relationship or occasional transaction which -

- (a) has been assessed as a low risk relationship pursuant to paragraph 3(4)(a) or in accordance with the NRA, or
- (b) in the case of a business of the type described in paragraph 6 of Schedule 2, is a relationship of a type specified in the Handbook for the purposes of this paragraph,

the business or individual (as the case may be) may, subject to the following provisions of this paragraph, apply reduced or simplified customer due diligence measures.", and

- (ii) for subparagraph 2(b) substitute -
"(b) where paragraph 3 applies to a specified business, by a specified business that complies with the requirements of that paragraph.",
- (c) in paragraph 7 -
 - (i) in subparagraph (2)(c) for "being carried outside" substitute "being carried out outside", and
 - (ii) after subparagraph (2), insert the following subparagraph -

"(3) In the case of a business of the type described in paragraph 6 of Schedule 2, subparagraph (2) is modified to apply as if -

- (a) the words "to do so would be consistent with the risk assessment of the business relationship

conducted pursuant to paragraph 3(4)(a), and" were deleted, and

(b) for item (c) there were substituted the following item -

"(c) any relevant rules and guidance in the Handbook are complied with.".

(d) in paragraph 11(1)(b), for "financial service" substitute "specified",

(e) in paragraph 12, in subparagraph (4) for "deemed to have be appointed" substitute "deemed to have been appointed", and at the end insert the following subparagraph -

"(5) In the case of a business of the type described in paragraph 6 of Schedule 2, this paragraph is modified to apply as if for the whole paragraph there were substituted -

"12. In the case of a specified business of the type described in paragraph 6 of Schedule 2, the individual concerned ("P") shall ensure that -

(a) in determining whether P is required to make a disclosure under Part I of the Disclosure Law, and sections 15 and 15A or section 12 (as appropriate) of the Terrorism Law, P takes into account all relevant information, and

(b) P establishes and maintains appropriate and effective procedures as are necessary to ensure compliance with requirements to make disclosures

under Part I of the Disclosure Law, and sections 15 and 15A or section 12 (as appropriate) of the Terrorism Law.".

- (f) at the start of paragraph 13(2) insert "Subject to subparagraph (2A)", and after paragraph 13(2) insert -

"(2A) In the case of a specified business of the type described in paragraph 6 of Schedule 2, the individual concerned ("P") shall, having regard to the money laundering and terrorist financing risks to the company or companies of which P is a director, maintain an understanding of the relevant enactments, this Schedule (including any guidance, instructions, notices or other similar instruments issued or made under this Schedule) and the Handbook, and of P's obligations thereunder."

- (g) in paragraph 14, after subparagraph (6), insert the following subparagraph -

"(7) In the case of a business of the type described in paragraph 6 of Schedule 2, this paragraph is modified to apply as if -

- (a) in subparagraph (2)(a), ", risk assessments undertaken under paragraph 3(4)," were deleted, and

- (b) subparagraphs (3), (5)(b), (c) and (d) were deleted."

and

- (h) in paragraph 21, in the definition of "Appendix C business", after sub-item (C) insert "but does not include a

business of the type described in paragraph 6 of Schedule 2,".

(3) In Schedule 5 -

(a) in paragraph 1, renumber the existing text as subparagraph (1), and at the start of subparagraph (1) insert "Save in the case of a business of the type described in paragraph 6 of Schedule 2 in respect of which subparagraphs (2) and (3) apply," and

(b) after subparagraph (1) insert -

"(2) In relation to a prescribed business of the type described in paragraph 6 of Schedule 2, for the purpose of establishing whether an individual is acting as a director of not more than six companies within the meaning of section 3(1)(g) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020 the following categories of company shall be discounted -

(a) companies registered in the Bailiwick that are administered by a corporate services provider, and

(b) companies registered in the Register of Non Profit Organisations established under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

(3) For the purposes of this paragraph -

(a) a company is "**administered by a corporate services provider**" if the corporate services provider -

(i) acts as the resident agent of the company,
and

(ii) provides administration services to the company that are additional to -

(A) company secretarial services, and

(B) the undertaking of the duties imposed on resident agents by Part XXIX of the Companies (Guernsey) Law, 2008, or Part XXIA of the Companies (Alderney) Law, 1994 (as the case may be), and

(b) "**corporate services provider**" and "**resident agent**", in relation to companies registered under the Companies (Guernsey) Law, 2008, have the same meanings as in that Law, and in relation to companies registered under the Companies (Alderney) Law, 1994, have the same meanings as in that Law.",

(c) in paragraph 2 -

(i) after subparagraph (1), insert the following paragraph -

"(1A) Subparagraphs (3) and (4) do not apply to a business of the type described in paragraph 6 of Schedule 2, in respect of which subparagraph (3A) applies.",

(ii) after subparagraph (3), insert the following subparagraph -

"(3A) A business to which this paragraph applies and which, by virtue of subparagraph (1), is under an obligation to register, shall submit, and pay, to the Commission -

(a) a statement, in such form and manner as the Commission may determine, of -

(i) the name, residential address and date of birth (together with details of any prior names) of the individual who is carrying on by way of business the activities described in section 3(1)(g) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020,

(ii) details of any insolvency or director disqualification of that individual, whether in the Bailiwick or elsewhere,

(iii) in relation to each directorship held by the individual -

(A) the legal name and any trading names of the company,

(B) its place and date of incorporation,

(C) the address of its registered office,

(D) details of the nature of the activities it carries out, and the location or locations from where they are carried out,

(E) the individual's ownership interest in the company, and

(F) the country or territory of residence of the company's beneficial owners, and

(b) a non-refundable registration fee of £75.",

(iii) for subparagraph (5), substitute -

"(5) Subject to subparagraph (5A), on receipt of -

(a) a statement containing all the information referred to in subparagraph (3)(a) or (3A)(a) (as the case may be), and

(b) the registration fee referred to in subparagraph (3)(b) or (3A)(b) (as the case may be),

the Commission shall register the prescribed business.

(5A) The Commission may refuse to register a business of the type described in paragraph 6 of Schedule 2 in circumstances where the individual carrying on the business -

- (a) is or has been insolvent or disqualified as a director, whether in the Bailiwick or elsewhere,
- (b) has had the exemption from the operation of section 1 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020 conferred by section 3(1)(g) of that Law disappplied by the Commission under section 32 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, or
- (c) is not, in the opinion of the Commission, currently undertaking the activity set out in section 3(1)(g) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020.", and
- (iv) at the end of subparagraph (7) insert ", and in this paragraph "**insolvent**" means that -
 - (a) the individual has been declared by the Royal Court to be insolvent,
 - (b) the affairs of the individual have been declared in a state of "désastre" by his or her arresting creditors at a meeting before a Commissioner,

- (c) a preliminary vesting order has been made against the individual in respect of any of his or her real property in the Bailiwick,
- (d) a composition or arrangement with creditors has been entered into in respect of the individual whereby the individual's creditors will receive less than 100p in the pound or that possession or control has been taken of any of the individual's property or affairs by or on behalf of creditors, or
- (e) an event, measure or procedure has occurred outside of the Bailiwick in relation to the person which corresponds as nearly as may be to any event, measure or procedure described in paragraphs (a) to (d),

and "**insolvency**" shall be construed accordingly.",

(d) in paragraph 3 -

- (i) in subparagraph (2), for "under paragraph 2(2)(b) (subject to any reduction applicable under paragraph 2(3))", substitute "under paragraph 2(3)(b) or 2(3A)(b) (as the case may be) (subject to any reduction applicable under paragraph 2(3)(b))",
- (ii) in subparagraph (3), for "paragraph 2(2)(a)(i) to (v)" substitute "paragraph 2(3)(a)(i) to (v) or 2(3A)(i) to (iii) (as the case may be)", and

(iii) in subparagraph (4), after "A prescribed business" insert "(other than a business of the type described in paragraph 6 of Schedule 2, in respect of which subparagraph (5) applies)",

(iv) after subparagraph (4), insert -

"(5) In relation to a business of the type described in paragraph 6 of Schedule 2, an individual carrying on by way of business the activities described in that paragraph must provide to the Commission each year, by a date specified by the Commission on the website of the Commission, a statement of the directorships held by the individual.",

(e) in paragraph 5 -

(i) for the title, substitute "**Suspension or revocation of registration.**",

(ii) in subparagraph (1), after "suspend" insert "or revoke",

(iii) after subparagraph (1) insert the following subparagraph -

"(1A) The Commission may suspend or revoke the registration of a business of the type described in paragraph 6 of Schedule 2 in any of the circumstances described in paragraph 2(5A).",

(iv) in subparagraph (2), for "subparagraph (1)" substitute "subparagraph (1) or (1A)", and

(v) after subparagraph (3), insert the following subparagraph -

"(4) The revocation of a registration in pursuance of subparagraph (1) or (1A) shall take effect on service to the prescribed business concerned of a notice in writing, or at such later date as may be specified in the notice.

(5) The revocation of a registration shall be irrevocable unless it is expressed to take effect on a particular date and, before that date, the Commission withdraws the revocation."

(f) in paragraph 7(1), at the start of both subparagraph (b) and subparagraph (c) insert "subject to subparagraph (1A)", and after subparagraph (1) insert -

"(1A) Before the Commission makes the list referred to in subparagraph (1) available under subparagraph (1)(b) or publishes it under subparagraph (1)(c), it shall remove from the list the names and other details of individual persons carrying on by way of business the activities described in paragraph 6 of Schedule 2.", and

(g) in paragraph 9(1), after "a decision of the Commission to impose, vary or rescind any condition in respect of the person's registration under paragraph 4" insert ", or to refuse to register a prescribed business under paragraph 2(5A), or to suspend or revoke a business's registration under paragraph 5(1A)",

Transitional provisions.

2. (1) Paragraph 20 of Schedule 3 (offences: general) and paragraph 11 of Schedule 5 (offences: general) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall not apply to a paragraph 2(3A) business until 1st October 2023.

(2) In this regulation, a "**paragraph 2(3A) business**" is one to which paragraph 2(3A) of Schedule 5 applies, that is, a business of the type described in paragraph 6 of Schedule 2 which, after these Regulations come into force, is under an obligation to register with the Commission under paragraph 2 of Schedule 5.

Citation and commencement.

3. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023, and shall come into force on the 8th day of July, 2023.

Dated this 5th day of June, 2023

P.T.R. FERBRACHE

President of the the Policy & Resources Committee

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations (and the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2023 - the "**No. 1 Regulations**") make changes to the supervisory framework surrounding the six directorship exemption from the requirement to hold a personal fiduciary licence under Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey), Law, 2020. These

Regulations amend Schedules 3 and 5 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("**the Proceeds of Crime Law**"), and the No. 1 Regulations will amend Schedules 1 and 2 to that Law, to bring individuals benefitting from the six directorship exemption within the ambit of the registration framework for prescribed businesses under Schedule 5 to the Proceeds of Crime Law. The No. 1 Regulations also amend the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 so that individuals benefitting from the six directorship exemption are subject to the Commission's powers in relation to prescribed businesses under that Law, e.g. to obtain information. It should be noted that within the broader supervisory framework, the Guernsey Financial Services Commission has power to disapply the six directorship exemption for contraventions of the Proceeds of Crime Law. The Regulations also correct several minor typographical errors in the Schedules.

These Regulations and the No. 1 Regulations are being made separately because they are subject to different legislative procedures before the States of Deliberation – these Regulations will be presented to the States with a policy letter and cannot come into force until approved by Resolution of the States; the No. 1 Regulations, when made by the Committee, will be laid before the States, which may annul them.

If approved, these Regulations will come into force on the 8th day of July, 2023.