PROJET DE LOI

ENTITLED

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 *

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No. VIII of 1999 (Ordres en Conseil Vol. XXXIX, p. 137); as amended by the: Government of Alderney (Amendment) Law, 2000 (No. I of 2000, Ordres en Conseil Vol. XL, p. 15); Proceeds of Crime and Drug Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2004 (No. II of 2005); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007 (No. XV of 2007); Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011 (No. XI of 2011); Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 (No. XII of 2022); Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023 (No. VI of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 1999 (No. XXVIII of 1999, Recueil d'Ordonnances Tome XXVIII, p. 266); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002 (No. XII of 2002, Recueil d'Ordonnances Tome XXIX, p. 112); Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007 (No. XLVII of 2007, Recueil d'Ordonnances Tome XXXII, p. 666); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2008 (No. XXXVII of 2008); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010 (No. XVI of 2010); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010 (No. XXXIV of 2010); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2014 (No. XVII of 2014); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017 (No. XVIII of 2017); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018 (No. XLIV of 2018); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2019 (No. XLIX of 2019); Criminal Justice (Miscellaneous Amendments) (Bailiwick of Guernsey) Ordinance, 2022 (No. XXVII of 2022); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2022 (No. ** of 2022); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023 (No. IV of 2023); Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2023 (No. VIII of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2023 (No. XIV 2023); Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023 (No. XVI of 2023); Criminal Justice (Miscellaneous Amendments - Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023 (No. XVII of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2023 (No. XVIII of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023 (No. XIX of 2023); Criminal Justice (Miscellaneous Amendments – Deferred Prosecution Agreements) (Bailiwick of Guernsey) Ordinance, 2023 (No. XXX of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 5) Ordinance, 2023 (No. XLI of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024 (No. VII of 2024); Criminal Justice (Proceeds of Crime – Seized Assets Fund) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024 (No. IX of 2024); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2025 (No. ** of 2025); Criminal Justice (Proceeds of Crime (Access to Beneficial Ownership Information) (Amendment) Ordinance, 2025 (No. ** of 2025); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 (G.S.I. No. 56 of 1999); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2002 (G.S.I. No. 4 of 2002); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002 (G.S.I. No. 27 of 2002); Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 (G.S.I. No. 33 of 2007); Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. No. 48 of 2008); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008 (G.S.I. No. 73 of 2008); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010 (G.S.I. No. 12 of 2010); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2013 (G.S.I. No. 14 of 2013); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedule 2) Regulations, 2016 (G.S.I. No. 45 of 2016); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Fees) (Amendment) Regulations, 2021 (G.S.I. No. 162 of 2021); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Fees) (Amendment) Regulations, 2022 (G.S.I. No. 111 of 2022); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2023 (G.S.I. No. 34 of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023 (G.S.I. No. 46 of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Regulations, 2023 (G.S.I. No. 47 of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations, 2023 (G.S.I. No. 48 of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Equivalent Jurisdictions) (Amendment)

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote above. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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Regulations, 2023 (G.S.I. No 49 of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Fees) (Amendment) Regulations, 2023 (G.S.I. No 126 of 2023); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) Regulations, 2024 (G.S.I. No 8 of 2024); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 2) Regulations, 2024 (G.S.I. No. 27 of 2024); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2024 (G.S.I. No. 37 of 2024); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 3) Regulations, 2024 (G.S.I. No. 38 of 2024); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 4) Regulations, 2024 (G.S.I. No. 40 of 2024). This Law is modified by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999 (No. XXXIII of 1999, Recueil d'Ordonnances Tome XXVIII, p. 274). See also the: Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 (*supra*); Criminal Justice (Proceeds of Crime) (Designation of Competent Authorities) Regulations, 2003 (G.S.I. No. 29 of 2003); Criminal Justice (Proceeds of Crime) (Designation of Competent Authorities) Regulations, 2004 (G.S.I. No. 12 of 2004); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Beneficial Ownership) Regulations, 2017 (G.S.I. No. 55 of 2017); Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2019 (G.S.I. No. 73 of 2019); Financial Services Commission (Fees and Administrative Financial Penalties) Regulations, 2025 (G.S.I. No. 116 of 2025). This Law is prospectively amended by the: Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (No. VI of 2017).

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The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

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The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

THE STATES, in pursuance of their Resolution of the 1st day of August, 1997[a], have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

CONFISCATION ORDERS, RESTRAINT ORDERS & CHARGING ORDERS

Meaning of "criminal conduct".

1. (1) [Subject to section 44A, in this Law] **"criminal conduct"** means any conduct, other than drug trafficking –

(a) which constitutes a criminal offence under the laws of the Bailiwick which may be tried on indictment, or

(b) which would constitute such an offence if it were to take place in the Bailiwick.

(2) In subsection (1) **"drug trafficking"** means any conduct covered by the definition of **"drug trafficking"** or **"drug trafficking offence"** in the

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a Article XXII of Billet d'État No. XVI of 1997.

Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 and the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992[b].

NOTES

In section 1, the words in square brackets in subsection (1) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 2, with effect from 3rd December, 2007.

The following cases have referred to this Law:

Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and Government of Republic of Indonesia 2007–08 GLR 73*;*

Fidelity Management Limited v. Royal Bank of Canada (Channel Islands) Limited (2007) (Unreported, Royal Court, 20th September) (Guernsey Judgment No 29/2007); 2007–08 GLR Note 14*;*

McCarthy v. Law Officers of the Crown 2007–08 GLR 414*;*

Garnet Investments Limited v The Chief Officers FIS, Customs & Excise, Immigration and Nationality Service (2011) (Unreported, Royal Court, 15th February) (Guernsey Judgment No 5/2011)*;*

Taylor v Law Officers of the Crown 2011-12 GLR 81*;*

Chief Officer of Customs etc v Garnet Investments (2011) (Unreported, Court of Appeal, 6th July) (Guernsey Judgment No. 19/2011)*;*

Liang v RBC Trustees (Guernsey) Ltd (Unreported, Royal Court, 10th May) (Guernsey Judgment 20/2018)*;*

HM Procureur v Peter Edward Dawson-Ball [2021]GRC061 (Unreported, Royal Court, 15th December);

R. Loero v Credit Suisse Limited [2024]GRC075 (Unreported, Royal Court, 6th November).

The following case has referred to section 1:

L and M and N and Mrs B v Credit Suisse AG (Guernsey Branch) [2023]GRC026 (Unreported, Royal Court, 11th July).

The Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 and the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992 have both since been repealed by the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, section 74, Schedule 5, with effect from 1st December, 2000, subject to the transitional provisions in section 73 of, and Schedule 4 to, the 2000 Law.

b Ordres en Conseil Vol. XXXI, p. 109; and Order in Council No. V of 1992.

Confiscation orders.

2. (1) Where a defendant appears before [the Court] to be sentenced in respect of one or more offences committed after the commencement of this Law (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), then, if Her Majesty's Procureur in writing asks the Court to proceed under this section, it shall act as follows.

(2) The Court shall firstly determine whether the defendant has benefited from criminal conduct.

(3) For the purposes of this Law, a person has benefited from criminal conduct if he has [(whether before or after the commencement of this Law and whether directly or indirectly) acquired or obtained property (including, for the avoidance of doubt, any interest, dividend or other form of income or accrued value deriving directly, or indirectly, from that property)] as a result of or in connection with his or any other person's criminal conduct; and if he has derived a pecuniary advantage as a result of or in connection with criminal conduct, he is to be treated as if he had obtained instead a sum of money equal to the value of the pecuniary advantage.

(4) Subject to subsection (6), if the Court determines that the defendant has so benefited, it shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 5 the amount to be recovered in his case by virtue of this section.

(5) The Court shall then, in respect of the offence or offences concerned –

(a) order the defendant to pay that amount,

(b) take account of the order before –

(i) imposing any fine on him,

(ii) making any order involving any payment by him, other than an order under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990[c] (compensation orders),

(iii) making an order under section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974[d] (forfeiture orders),

(c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) If, in a case falling within subsection (4), the Court is satisfied that a victim of any relevant criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct –

(a) the Court shall have a power, instead of a duty, to make an order under this section,

(b) section 5 shall not apply for determining the amount to

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c Ordres en Conseil Vol. XXXII, p. 77.

d Ordres en Conseil Vol. XXIV, p. 273.

be recovered in that case by virtue of this section, and

(c) where the Court makes an order in exercise of that power, the sum required to be paid under that order shall be of such an amount, not exceeding the amount that would (but for paragraph (b)) apply by virtue of section 5, as the Court thinks fit.

(7) No enactment restricting the power of the Court dealing with an offender in a particular way from dealing with him also in any other way shall, by reason only of the making of an order under this section, restrict the Court from dealing with an offender in any way the Court considers appropriate in respect of an offence.

(8) The standard of proof required to determine any question arising under this Law as to –

(a) whether a person has benefited from criminal conduct, or

(b) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings [(that is to say, a balance of probabilities)].

(9) Where –

(a) the Court makes both a confiscation order and an order for the payment of compensation under section 1 of the Criminal Justice (Compensation) (Bailiwick of

Guernsey) Law, 1990 against the same person in the same proceedings, and

(b) it appears to the Court that he will not have sufficient means to satisfy both the orders in full,

it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order.

(10) In this Law **"confiscation order"** means an order under this section and includes such an order made by virtue of section 13, 14 or 19.

NOTES

In section 2,

the words in square brackets in subsection (1) were substituted by the Criminal Justice (Miscellaneous Amendments) (Bailiwick of Guernsey) Ordinance, 2022, section 5(2), with effect from 21st December, 2022;

the words in square brackets in subsection (3) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(2), with effect from 28th July, 2010;

the words in square brackets in subsection (8) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 3, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 2 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 1, with effect from 1st January, 2000.

Postponed determinations.

3. (1) Where the Court is acting under section 2 but considers that it

requires further information before –

(a) determining whether the defendant has benefited from criminal conduct, or

(b) determining the amount to be recovered in his case by virtue of that section,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the Court shall not specify a period under subsection (1) which –

(a) by itself, or

(b) where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods,

exceeds six months beginning with the date of conviction.

(4) Where the defendant appeals against the conviction, the Court may, on that account –

(a) postpone making either or both of the determinations mentioned in subsection (1) for such period as it may specify, or

(b) where it has already exercised its powers under this section to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) may be made –

(a) on application by the defendant or Her Majesty's Procureur, or

(b) by the Court of its own motion.

(6) Unless the Court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the Court exercises its power under subsection (1) or (4), it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the relevant offence or any of the relevant offences.

(8) Where the Court has so proceeded, section 2 shall have effect as if –

(a) in subsection (4), the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted, and

(b) in subsection (5)(c), after the word "determining", there were inserted "in relation to any offence in respect of

which he has not been sentenced or otherwise dealt with".

(9) In sentencing, or otherwise dealing with, the defendant in respect of the relevant offence or any of the relevant offences at any time during the specified period, the Court shall not –

(a) impose any fine on him, or

(b) make any such order as is mentioned in section 2(5)(b)(ii) or (iii).

(10) Where the Court has sentenced the defendant under subsection (7) during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making an order as mentioned in section 2 (5)(b)(ii) or (iii).

(11) In this section –

"the date of conviction" means –

(a) the date on which the defendant was convicted, or

(b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions, and

"the relevant offence" means the offence in respect of which the defendant appears (as mentioned in section 2(1)) before the Court.

NOTE

In its application to external confiscation orders, section 3 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 2, with effect from 1st January, 2000.

Assessing the proceeds of criminal conduct.

4. (1) For the purposes of this Law –

(a) any property obtained by a person at any time (whether before or after the commencement of this Law) as a result of or in connection with criminal conduct carried on by him or another person are his proceeds of criminal conduct, and

(b) the value of his proceeds of criminal conduct is the aggregate of the values of the property.

(2) Subject to subsections (4) and (5), the Court shall for the purpose –

(a) of determining whether the defendant has benefited from criminal conduct, and

(b) if he has, of assessing the value of his proceeds of criminal conduct,

make the required assumptions.

(3) The required assumptions are –

(a) that any property appearing to the Court –

(i) to have been held by the defendant at any time since his conviction, or

(ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the Court to have held it, as a result of or in connection with criminal conduct carried on by him,

(b) that any expenditure of his since the beginning of that period was met out of payments received by him as a result of or in connection with criminal conduct carried on by him, and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as a result of or in connection with criminal conduct, he received the property free of any other interest in it.

(4) The Court shall not make any required assumption in relation to any particular property or expenditure if –

(a) that assumption is shown to be incorrect in the defendant's case, or

(b) the Court is satisfied that there would be a serious risk

of injustice in the defendant's case if the assumption were to be made,

and, where by virtue of this subsection the Court does not make one or more of the required assumptions, it shall state its reasons.

(5) For the purpose of assessing the value of the defendant's proceeds of criminal conduct in a case where a confiscation order has previously been made against him, the Court shall leave out of account any of his proceeds of criminal conduct that are shown to the Court to have been taken into account in determining the amount to be recovered under that previous order.

[(6) For the purposes of subsection (4)(a) a required assumption is not shown to be incorrect in the defendant's case in relation to any property or expenditure by reason of it being shown that –

(a) the property was received by him as a result of or in connection with drug trafficking carried on by him or another person or, as the case may be,

(b) the expenditure was met out of payments received by him as a result of or in connection with drug trafficking carried on by him or another person.

(7) In this section **"drug trafficking"** has the meaning given by section 1(2).]

NOTES

In section 4, subsection (6) and subsection (7) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 4, with effect from 3rd December, 2007.

The following cases have referred to section 4:

L and M and N and Mrs B v Credit Suisse AG (Guernsey Branch) [2023]GRC026 (Unreported, Royal Court, 11th July);
R. Loero v Credit Suisse Limited [2024]GRC075 (Unreported, Royal Court, 6th November).

In its application to external confiscation orders, section 4 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 2, with effect from 1st January, 2000.

Amount to be recovered under a confiscation order.

5. (1) Subject to section 2(6)(b) and to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court assesses to be the value of the defendant's proceeds of criminal conduct.

(2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by reason of the acceptance of an allegation made in a statement given under section 11 or made in the giving of information under section 12, or otherwise) the Court may issue a certificate giving the Court's opinions as to the matters concerned, and shall do so if satisfied as mentioned in subsection (3).

(3) If the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of his proceeds of criminal conduct, the amount to be recovered in the defendant's case under the confiscation order shall be –

(a) the amount appearing to the Court to be the amount that might be so realised, or

(b) a nominal amount, where it appears to the Court (on the

information available to it at the time) that the amount that might be so realised is nil.

NOTE

In its application to external confiscation orders, section 5 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 2, with effect from 1st January, 2000.

Meaning of "amount that might be realised" and "realisable property".

6. (1) For the purposes of this Law the amount that might be realised at the time the confiscation order is made against the defendant is –

(a) the total of the values at that time of all the realisable property held by the defendant, less

(b) where there are obligations having priority at that time, the total amount payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Law.

(2) In this Law **"realisable property"** means, subject to subsection (3) –

(a) any property held by the defendant, and

(b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law.

(3) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely –

(a) section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974[e],

(b) section 11(2), (3) or (4) of the Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990[f].

(4) For the purposes of subsection (1), an obligation has priority at any time if it is an obligation of the defendant –

(a) to pay an amount due in respect of a fine, or any other order of a court, imposed or made on conviction of an offence, where the fine was imposed or the order was made before the confiscation order, or

(b) to pay any sum which, if the defendant's affairs had been declared to be in a state of désastre, would be included among the preferred debts (within the meaning of section 1 of the Preferred Debts (Guernsey) Law, 1983[g]; and for the purposes of the said section 1 the relevant date shall be the date of the confiscation order.

NOTES

e Ordres en Conseil Vol. XXIV, p. 273.

f Ordres en Conseil Vol. XXXII, p. 236.

g Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; No. III of 1993 and No. IX of 1998.

In its application to external confiscation orders, section 6 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 3, with effect from 1st January, 2000.

The Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990 has since been repealed by the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, section 2, with effect from 15th July, 2002, subject to the transitional provisions in section 81 of the 2002 Law.

Value of property.

7. (1) Subject to the following provisions of this section and to section 8 [and section 8A], for the purposes of this Law the value of property (other than cash) in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is –

(a) the market value of the first mentioned person's beneficial interest in the property, less

(b) the amount required to discharge any encumbrance (other than a charging order) on that interest.

(2) Subject to section 8(2) [and section 8A], references in this Law to the value at any time (referred to in subsection (3) as **"the material time"**) of a gift caught by this Law or of any property obtained by a person as a result of or in connection with criminal conduct are references to –

(a) the value of the gift or property to the recipient when he received or obtained it, adjusted to take account of subsequent changes in the value of money, or

(b) where subsection (3) applies, the value therein

mentioned,

whichever is the greater.

(3) Subject to section 8(2) [and section 8A], if at the material time the recipient holds –

(a) the property which he received or obtained (not being cash), or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received or obtained,

the value referred to in subsection (2)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received or obtained, but disregarding in either case any charging order made under this Law.

NOTE

In section 7, the words, figure and letter "and section 8A" in square brackets in, first, subsection (1) and, second, subsection (2) and subsection (3) were inserted by the Criminal Justice (Proceeds of Crime and Drug Trafficking) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, respectively section 1(2)(a) and section 1(2)(b), with effect from 15th August, 2023.

Gifts caught by this Law.

8. (1) [Subject to section 8A,] a gift (including a gift made before the commencement of this Law) is caught by this Law if –

(a) it was made by the defendant at any time since the

beginning of the period of six years ending when the proceedings were instituted against him, or

(b) it was made by the defendant at any time and was a gift of property –

(i) received by the defendant in connection with criminal conduct carried on by him or another person, or

(ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(2) For the purposes of this Law –

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant, and

(b) in those circumstances, the provisions of subsection (1) and of section 7 shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

NOTES

In section 8, the words, figure and letter in square brackets in subsection (1) were inserted by the Criminal Justice (Proceeds of Crime and Drug Trafficking) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(2)(c), with effect from 15th August, 2023.

In its application to external confiscation orders, section 8 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 4, with effect from 1st January, 2000.

[**Treatment of real property vested by "saisie" proceedings.**

8A. (1) Subsection (2) applies where –

(a) a final vesting order is made in relation to the real property of a debtor (**"D"**), and

(b) D is subsequently a defendant in criminal proceedings instituted not more than six years after that final vesting order is made, and a confiscation order is made in those criminal proceedings.

(2) Subject to subsection (3), where this subsection applies, the relevant amount shall, for the purposes of realising the amount in which the confiscation order is made, be treated as a gift made by D that is caught by this Law.

(3) In the criminal proceedings in which the confiscation order is made, the court may treat some or all of the relevant amount other than as a gift made by D that is caught by this Law, where it considers that to do so is in the interests of justice.

(4) For the avoidance of doubt, subsection (2) applies whether or

not D is connected in any way to the person in whom the real property has been vested by and under the final vesting order.

(5) In this section –

(a) **"the relevant amount"** means the market value of the real property subject to the final vesting order at the time of the making of that order, and

(b) other words and phrases in this section have the same meaning as in the Saisie Procedure (Simplification) (Bailiwick of Guernsey) Order, 1952.]

NOTE

Section 8A was inserted by the Criminal Justice (Proceeds of Crime and Drug Trafficking) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(2)(d), with effect from 15th August, 2023.

Procedure for enforcing confiscation orders.

9. (1) Subject to subsections (2) and (3), where the Court orders the defendant to pay any amount under section 2, the Court may, if it thinks fit, order the defendant to be imprisoned in default of payment of the amount.

(2) When exercising its powers under subsection (1) the Court may in respect of a confiscation order of an amount in Column 1 below impose a term of imprisonment not exceeding the maximum period set out opposite that amount in Column 2—

Column 1	Column 2

AMOUNT OF CONFISCATION ORDER	MAXIMUM PERIOD
An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years

An amount exceeding £1 million	10 years;

and the States may by Ordinance amend the amounts and periods set out in the above table.

(3) The Court may, in its discretion, defer such imprisonment on such terms as it thinks fit.

(4) Where an order of imprisonment is made under this section, it shall cease to have effect on payment of the full amount ordered to be paid under section 2.

(5) Where an order of imprisonment is made under this section and payment is made of part of the amount ordered under section 2, the term of imprisonment to be served as a result of the order under this section shall be reduced in proportion to the amount paid.

(6) A term of imprisonment imposed under this section in default of payment shall be served consecutively to any term of imprisonment which the defendant may be liable to serve in respect of any offence or offences.

(7) The reference in subsection (6) to any term of imprisonment which the defendant is liable to serve in respect of any offence or offences is a reference to the term of imprisonment or youth detention (as the case may be) which he is liable to serve in respect of the offence or offences; and for the purposes of this subsection –

(a) consecutive terms and terms which are wholly or partly

concurrent are treated as a single term, and

(b) the Court shall disregard any sentence which is suspended under section 1 of the Criminal Justice (Power to Suspend Sentence) (Bailiwick of Guernsey) Law, 1972[h] and which has not been activated at the time when a term of imprisonment is imposed under this section.

(8) Where the defendant serves a term of imprisonment imposed under this section without satisfying the amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

(9) This section applies in relation to confiscation orders made by the Criminal Division of the Court of Appeal in the same way as it applies to such orders made by the Court, and references in this section to the Court shall be construed accordingly.

NOTE

In its application to external confiscation orders, section 9 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Interest on sums unpaid under confiscation orders.

10. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that sum for the period in which it remains unpaid; and the amount of

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h Ordres en Conseil Vol. XXIII, p. 344.

interest shall for the purposes of enforcement be treated as part of the amount to be recovered under the confiscation order.

(2) The Court may, on the application of Her Majesty's Procureur, increase the term of imprisonment fixed in respect of the confiscation order under section 9(1) where subsection (1) applies and interest has accrued.

(3) The rate of interest under subsection (1) is that for the time being applying to a judgment debt under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985[i].

NOTE

In its application to external confiscation orders, section 10 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Statements relating to criminal conduct.

11. (1) Where Her Majesty's Procureur asks the Court to proceed under section 2, he shall give the Court, within such period as it may direct, a statement of matters which he considers relevant in connection with –

(a) determining whether the defendant has benefited from criminal conduct, or

(b) assessing the value of his proceeds of criminal conduct.

(2) In this section such a statement is referred to as a

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[i] Ordres en Conseil Vol. XXIX, p. 133; amended by Order of the Royal Court No. I of 1996.

"prosecutor's statement".

(3) Where Her Majesty's Procureur has given a prosecutor's statement –

(a) he may at any time give the Court a further such statement, and

(b) the Court may at any time require him to give it a further such statement, within such period as it may direct.

(4) Where any prosecutor's statement has been given and the Court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant –

(a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement, and

(b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely.

(5) Where the Court has given a direction or made a requirement under this section it may at any time vary it by giving or making a further direction or requirement.

(6) Where the defendant accepts to any extent any allegation in any prosecutor's statement, the Court may, for the purposes of –

(a) determining whether the defendant has benefited from

criminal conduct, or

(b) assessing the value of his proceeds of criminal conduct,

treat his acceptance as conclusive of the matters to which it relates.

(7) If the defendant fails in any respect to comply with a requirement under subsection (4) he may be treated for the purposes of this section as accepting every allegation in the prosecutor's statement in question apart from –

(a) any allegation in respect of which he has complied with the requirement, and

(b) any allegation that he has benefited from criminal conduct or that any property was received or obtained by him as a result of or in connection with criminal conduct carried on by him or another person.

(8) Where –

(a) there is given to the Court by the defendant a statement as to matters relevant to determining the amount that might be realised at the time the confiscation order is made, and

(b) Her Majesty's Procureur accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance by Her Majesty's Procureur as conclusive of the matters to which it relates.

(9) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in such manner as the Court may direct.

(10) No acceptance by the defendant under this section that any property was received or obtained by him as a result of or in connection with criminal conduct carried on by him or another person shall be admissible in evidence in any proceedings for an offence.

NOTE

In its application to external confiscation orders, section 11 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Provision of information by defendant.

12. (1) This section applies where Her Majesty's Procureur has asked the Court to proceed under section 2.

(2) For the purpose of obtaining information to assist it in carrying out its functions, the Court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) may require all, or any specified part, of the required information to be given to the Court in such manner, and for such date, as may be specified in the order.

(4) If the defendant fails without reasonable excuse (proof whereof shall lie on him) to comply with any order under this section, the Court may draw such inference from that failure as it considers appropriate.

(5) Where Her Majesty's Procureur accepts to any extent any allegation made by the defendant in giving to the Court information required by an order under this section, the Court may treat that acceptance as conclusive of the matters to which it relates.

(6) For the purposes of this section, an allegation may be accepted in such manner as the Court may direct.

NOTE

In its application to external confiscation orders, section 12 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Further proceedings in connection with confiscation orders

Reconsideration of case where Court has not proceeded under section 2.

13. (1) This section applies where the defendant has appeared before the Court to be sentenced in respect of one or more offences but the Court has not proceeded under section 2.

(2) If Her Majesty's Procureur has evidence –

(a) which was not available to him when the defendant appeared to be sentenced (and accordingly it was not considered by the Court), but

(b) which Her Majesty's Procureur believes would have led the Court to determine that the defendant had benefited from criminal conduct if –

(i) Her Majesty's Procureur had asked the Court to proceed under section 2, and

(ii) the evidence had been considered by the Court,

he may apply to the Court for it to consider the evidence.

(3) The Court shall proceed under section 2 if, having considered the evidence, it is satisfied that it is appropriate to do so.

(4) In considering whether it is appropriate to proceed under section 2, the Court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under section 2, the Court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(6) In considering the circumstances of any case the Court shall have regard, in particular, to the amount of any fine or fines imposed on the defendant in respect of the offence or offences in question.

(7) Where the Court is proceeding under section 2 by virtue of this section, subsection (4) of that section shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(8) The Court may take into account any property received or obtained by the defendant on or after the date of conviction, but only if Her Majesty's Procureur shows that it was received or obtained by the defendant as a result of or in

connection with criminal conduct carried on by the defendant or another person on or before that date.

(9) In considering under this section any evidence which relates to any property to which subsection (8) applies, the Court shall not make the assumptions which would otherwise be required by section 4.

(10) No application shall be entertained by the Court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(11) Sections 11 and 12 shall apply where Her Majesty's Procureur makes an application under this section as they apply where Her Majesty's Procureur asks the Court to proceed under section 2.

(12) In this section **"the date of conviction"** means –

(a) the date on which the defendant was convicted, or

(b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

NOTE

In its application to external confiscation orders, section 13 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Re-assessment of whether defendant has benefited from criminal conduct.

14. (1) This section applies where the Court has made a determination under section 2(2) (**"the section 2(2) determination"**) that the defendant has not benefited from criminal conduct.

(2) If Her Majesty's Procureur has evidence –

(a) which was not considered by the Court in making the section 2(2) determination, but

(b) which Her Majesty's Procureur believes would have led the Court to determine that the defendant had benefited from criminal conduct if it had been considered by the Court,

he may apply to the Court for it to consider that evidence.

(3) If, having considered the evidence, the Court is satisfied that it would have determined that the defendant had benefited from criminal conduct if that evidence had been available to it, the Court –

(a) shall make –

(i) a fresh determination under section 2(2), and

(ii) a determination under section 2(4) of the amount to be recovered by virtue of section 2, and

(b) may make a confiscation order.

(4) Where the Court is proceeding under section 2 by virtue of this section, section 2(4) shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(5) The Court may take into account any property received or obtained by the defendant on or after the date of the section 2(2) determination, but only if Her Majesty's Procureur shows that it was received or obtained by the defendant as a result of or in connection with criminal conduct carried on by the defendant or another person on or before that date.

(6) In considering under this section any evidence which relates to any property to which subsection (5) applies, the Court shall not make the assumptions which would otherwise be required by section 4.

(7) No application shall be entertained by the Court under this section if it is made after the end of the period of 6 years beginning with the date of conviction; and in this subsection **"the date of conviction"** has the same meaning as in section 13.

(8) Sections 11 and 12 shall apply where Her Majesty's Procureur makes an application under this section as they apply where Her Majesty's Procureur asks the Court to proceed under section 2.

NOTE

In its application to external confiscation orders, section 14 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Revised assessment of the proceeds of criminal conduct.

15. (1) This section applies where the Court has made a determination under section 2(4) of the amount to be recovered in a particular case by virtue of that section (**"the current section 2(4) determination"**).

(2) Where Her Majesty's Procureur is of the opinion that the real value of the defendant's proceeds of criminal conduct was greater than their assessed value, he may apply to the Court for the evidence on which he has formed his opinion to be considered by the Court.

(3) Sections 11 and 12 shall apply where Her Majesty's Procureur makes such an application as they apply where he asks the Court to proceed under section 2, but subject (in the case of section 11) to subsection (9)(a).

(4) If, having considered the evidence, the Court is satisfied that the real value of the defendant's proceeds of criminal conduct is greater than their assessed value (whether because the real value at the time of the current section 2(4) determination was higher than was thought or because the value of the proceeds in question has subsequently increased), the Court shall make a fresh determination under section 2(4) of the amount to be recovered by virtue of that section.

(5) In subsections (2) and (4) –

"assessed value" means the value of the defendant's proceeds of criminal conduct as assessed by the Court in accordance with section 5(1), and

"real value" means the value of the defendant's proceeds of criminal conduct which took place –

(a) in the period by reference to which the current section 2(4) determination was made, or

(b) in any earlier period.

(6) Where the Court is proceeding under section 2 by virtue of this section, section 2(4) shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(7) Any determination under section 2(4) by virtue of this section shall be by reference to the amount that might be realized at the time when the determination is made.

(8) In the case of any determination under section 2(4) by virtue of this section, section 4(5) shall not apply in relation to any of the defendant's proceeds of criminal conduct taken into account in respect of the current section 2(4) determination.

(9) In relation to any such determination by virtue of this section –

(a) sections 5(2), 6(4) and 11(8)(a) shall have effect as if for "confiscation order" there were substituted "determination";

(b) section 5(3) shall have effect as if for "confiscation order is made" there were substituted "determination is made"; and

(c) section 6(1) shall have effect as if for "the confiscation order is made against the defendant" there were substituted "of the determination".

(10) The Court may take into account any property received or obtained by the defendant on or after the date of the current section 2(4) determination, but only if Her Majesty's Procureur shows that it was received or obtained by the defendant as a result of or in connection with criminal conduct carried on by the defendant or any person on or before that date.

(11) In considering under this section any evidence which relates to any property to which subsection (10) applies, the Court shall not make the assumptions which would otherwise be required by section 4.

(12) If, as a result of making the fresh determination required by subsection (4), the amount to be recovered exceeds the amount set by the current section 2(4) determination, the Court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current section 2(4) determination such greater amount as it thinks just in all the circumstances of the case.

(13) Where the Court varies a confiscation order under subsection (12), it may, if it thinks fit –

(a) increase the term of imprisonment imposed in respect of the confiscation order, or vary any terms upon which such imprisonment was deferred, under section 9, or

(b) where it had not previously made such an order of imprisonment, subject to section 9, order the defendant to be imprisoned until the substituted amount is paid.

(14) The Court shall not entertain an application under this section if it is made more than six years after the date of conviction; and in this subsection **"the date of conviction"** has the same meaning as in section 13.

NOTE

In its application to external confiscation orders, section 15 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Increase in realisable property.

16. (1) This section applies where, by virtue of section 5(3), the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of criminal conduct.

(2) If, on an application made in accordance with subsection (3), the Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount to be recovered under the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), the Court shall issue a certificate to that effect, giving the Court's reasons.

(3) An application under subsection (2) may be made either by Her Majesty's Procureur or Her Majesty's Sheriff appointed as receiver in relation to the realisable property of the person in question under section 26 or 29 or in pursuance of a charging order.

(4) Where a certificate has been issued under subsection (2), Her Majesty's Procureur may apply to the Court for an increase in the amount to be recovered under the confiscation order; and on that application the Court may –

(a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in

subsection (1)) as appears to the Court to be appropriate having regard to the amount now shown to be realisable, and

(b) increase the term of imprisonment imposed in respect of the confiscation order, or vary any terms on which such imprisonment was deferred, under section 9 or, where it had not previously made such an order of imprisonment, subject to section 9, order the defendant to be imprisoned until the substituted amount is paid.

NOTES

In its application to external confiscation orders, section 16 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

The following case has referred to section 16:

HM Procureur v Peter Edward Dawson-Ball [2021]GRC061 (Unreported, Royal Court, 15th December).

Inadequacy of realisable property.

17. (1) If, on an application made in respect of a confiscation order by –

(a) the defendant, or

(b) Her Majesty's Sheriff appointed as receiver under section 26 or 29 or in pursuance of a charging order,

the Court is satisfied that the realisable property is inadequate for the payment of any

amount remaining to be recovered under the confiscation order, the Court shall issue a certificate to that effect giving the Court's reasons.

(2) For the purposes of subsection (1) –

(a) in the case of realisable property held by a person whose affairs have been declared to be in a state of désastre, the Court shall take into account the extent to which any property held by him would be included among the preferred debts (within the meaning of section 1 of the Preferred Debts (Guernsey) Law, 1983[j]); and for the purposes of the said section 1 the relevant date shall be the date of the confiscation order, and

(b) the Court may disregard any inadequacy in the realisable property which appears to it to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Law from any risk of realisation under this Law.

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the Court for an order reducing the amount to be recovered under the confiscation order.

(4) The Court, on an application under subsection (3) –

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j Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; No. III of 1993 and No. IX of 1998.

(a) shall substitute for the amount to be recovered under the confiscation order such lesser amount as the Court thinks just in all the circumstances of the case, and

(b) may substitute for the term of imprisonment imposed under section 9 in respect of the amount to be recovered under the confiscation order a shorter term in respect of the lesser amount, or vary any terms upon which such imprisonment was deferred.

(5) Rules of Court may make provision –

(a) for the giving of notice of any application under this section, and

(b) for any person appearing to the Court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the Court.

NOTE

In its application to external confiscation orders, section 17 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Compensation.

18. (1) If proceedings are instituted against a person for any offence or offences and either –

(a) the proceedings do not result in his conviction for any offence, or

(b) he is convicted of one or more offences but –

(i) the conviction or convictions concerned are quashed, or

(ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court shall not order compensation to be paid in any case unless the Court is satisfied –

(a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned, and

(b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court under sections 26 to 29.

(3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this section shall be such as the Court thinks just in all the circumstances of the case.

(5) Compensation payable under this section shall be paid by the States of Guernsey.

NOTE

In its application to external confiscation orders, section 18 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Confiscation orders where the defendant has absconded or died

Powers of the Court where the defendant has absconded or died.

19. (1) Subsection (2) applies where a person has been convicted of one or more offences.

(2) If Her Majesty's Procureur asks the Court to proceed under this section, it may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that he has died or absconded.

(3) Subsection (4) applies where proceedings for one or more offences have been instituted against a person but have not been concluded.

(4) If Her Majesty's Procureur asks the Court to proceed under this section, it may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that he has absconded.

(5) The power conferred by subsection (4) may not be exercised at any time within two years from the date on which, in the opinion of the Court, the defendant absconded.

(6) In any proceedings on an application under this section –

(a) section 4(2) shall not apply,

(b) section 11 shall apply as it applies where Her Majesty' Procureur asks the Court to proceed under section 2, but with the omission of subsections (4), (6) and (7),

(c) the Court shall not make a confiscation order against a person who has absconded unless it is satisfied that Her Majesty's Procureur has taken reasonable steps to contact him, and

(d) any person appearing to the Court to be likely to be affected by the making of the confiscation order by the Court shall be entitled to appear before the Court and to make representations.

(7) Where the Court makes a confiscation order under this section against a person who has absconded, it may make such order as it thinks fit under section 9.

(8) Where the Court –

(a) has been asked to proceed under this section in relation to a defendant who has absconded, but

(b) has decided not to make a confiscation order against him,

section 14 shall not apply at any time while he remains an absconder.

(9) Where a confiscation order has been made in relation to any defendant by virtue of this section, section 15 shall not apply at any time while he remains an absconder.

NOTE

In its application to external confiscation orders, section 19 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Effect of conviction where the Court has acted under section 19.

20. (1) Where, in the case of any defendant, the Court has made a confiscation order by virtue of section 19, the Court shall, in respect of the offence or offences concerned –

(a) take account of the order before –

(i) imposing any fine on the defendant,

(ii) making any order involving any payment by him other than an order under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990[k],

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k Ordres en Conseil Vol. XXXII, p. 77.

(iii) making an order under section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974[l], and

(b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(2) Where the Court has made a confiscation order by virtue of section 19 and the defendant subsequently appears before a Court to be sentenced in respect of one or more of the offences concerned, section 2(1) shall not apply so far as his appearance is in respect of that offence or those offences.

NOTE

In its application to external confiscation orders, section 20 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Variation of confiscation orders made by virtue of section 19.

21. (1) This section applies where the Court has made a confiscation order by virtue of section 19(4), and the defendant has ceased to be an absconder.

(2) If the defendant alleges that –

(a) the value of his proceeds of criminal conduct in the period by reference to which the determination in question was made (**"the original value"**), or

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l Ordres en Conseil Vol. XXIV, p. 273.

(b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, he may apply to the Court for it to consider his evidence.

(3) If, having considered that evidence, the Court is satisfied that the defendant's allegation is correct, it –

(a) shall make a fresh determination under section 2(4), and

(b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) In the case of any determination under section 2(4) by virtue of this section, section 4(5) shall not apply in relation to any of the defendant's proceeds of criminal conduct taken into account in determining the original value.

(5) Where the Court varies a confiscation order under this section –

(a) it may substitute for the term of imprisonment imposed under section 9 in respect of the amount to be recovered under the order a shorter term in respect of the lesser amount, or vary any terms upon which such imprisonment was deferred, and

(b) on the application of a person who held property which was realisable property, it may order compensation to

be paid to the applicant in accordance with section 24 if –

(i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order, and

(ii) having regard to all the circumstances of the case, the Court considers it to be appropriate.

(6) No application shall be entertained by the Court under this section if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.

NOTE

In its application to external confiscation orders, section 21 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Compensation, etc, where absconder is acquitted.

22. (1) This section applies where the Court has made a confiscation order by virtue of section 19(4), and the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The Court shall cancel the confiscation order.

(3) The Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 24 if it is satisfied that the applicant has suffered

loss as a result of the making of the confiscation order.

NOTE

In its application to external confiscation orders, section 22 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Power to discharge confiscation order and order compensation where absconder returns.

23. (1) This section applies where –

(a) the Court has made a confiscation order by virtue of section 19(4) in relation to an absconder,

(b) the defendant has ceased to be an absconder, and

(c) section 22 does not apply.

(2) The Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that –

(a) there has been undue delay in continuing the proceedings in respect of which the power under section 19(4) was exercised, or

(b) Her Majesty's Procureur does not intend to proceed with the prosecution.

(3) Where the Court cancels a confiscation order under this section

it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 24 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

NOTE

In its application to external confiscation orders, section 23 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Provisions supplementary to sections 21, 22, and 23.

24. (1) Where the Court orders compensation to be paid under section 21, 22 or 23, the amount of that compensation shall be such as the Court considers just in all the circumstances of the case.

(2) Rules of Court may make provision –

(a) for the giving of notice of any application under section 21, 22 or 23, and

(b) for any person appearing to the Court to be likely to be affected by any exercise of its powers under any of those sections to be given an opportunity to make representations to the Court.

(3) Any payment of compensation under any of those sections shall be paid by the States of Guernsey.

(4) Where the Court cancels a confiscation order under section 22

or 23, it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

NOTE

In its application to external confiscation orders, section 24 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Restraint orders and charging orders

Restraint orders and charging orders: general provisions.

25. (1) The powers conferred on the Court by sections 26(1), 27(1) and 28(1) are exercisable where –

(a) proceedings have been instituted in the Bailiwick against the defendant for an offence or an application has been made by Her Majesty's Procureur in respect of the defendant under section 13, 14, 15, 16 or 19,

(b) the proceedings have not, or the application has not, been concluded, and

(c) the Court is satisfied that there is a reasonable cause to believe –

(i) in the case of an application under section 15 or 16, that the Court will be satisfied as mentioned in section 15(4) or, as the case may be, 16(2), or

(ii) in any other case, that the defendant has benefited from criminal conduct.

(2) The powers mentioned in subsection (1) are also exercisable where –

(a) the Court is satisfied that a person is to be charged with an offence or that an application of a kind mentioned in subsection (1)(a) is to be made in respect of the defendant, and

(b) the Court is also satisfied as mentioned in subsection (1)(c).

[(2A) The powers mentioned in subsection (1) are also exercisable where –

(a) a criminal investigation has been started in the Bailiwick with regard to criminal conduct, and

(b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.]

(3) The Court shall not exercise those powers by virtue of subsection (1) if it is satisfied –

(a) that there has been undue delay in continuing the proceedings or application in question, or

(b) that Her Majesty's Procureur does not intend to proceed.

(4) For the purposes of sections 26, 27 and 28, at any time when those powers are exercisable before proceedings have been instituted –

(a) references in this Law to the defendant shall be construed as references to the person referred to in subsection (2)(a),

(b) references in this Law to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) for an offence.

(5) A restraint order or a charging order –

(a) may be made only on an application by Her Majesty's Procureur,

(b) may be made on an ex parte application to the Bailiff in chambers,

(c) shall provide for notice to be given to persons affected by the order, and

(d) may be made subject to conditions, including, without prejudice to the generality of the foregoing, conditions as to when the order is to become effective.

(6) A restraint order or a charging order –

(a) may be discharged or varied in relation to any property,

and

(b) shall be discharged –

(i) when proceedings for the offence or in relation to the application are concluded,

(ii) in the case of an order made by virtue of subsection (2), if the proposed proceedings are not instituted [in respect of the offence, or (as the case may be) if the application is not made,] within such time as the Court considers reasonable,

(iii) in the case of a charging order, if the amount the payment of which is secured by the order is lodged with Her Majesty's Greffier in Guernsey.

(7) An application for the discharge or variation of a restraint order or charging order may be made to the Court by any person affected by it.

(8) The powers of the Court under this section and under sections 26, 27 and 28 –

(a) to make, vary or discharge a restraint order or a charging order,

(b) to appoint Her Majesty's Sheriff as receiver, and

(c) to give directions,

may be exercised by the Bailiff in chambers, and any application to him may be made on an ex parte basis; and references to **"the Court"** in those provisions and in sections 31(1) and 33(2) shall be construed accordingly.

(9) In exceptional circumstances or in an emergency the power of the Court to make a restraint order or a charging order may be exercised –

(a) in relation to realisable property situated in Alderney, securities of the States of Alderney, securities of an Alderney company, other securities registered in a register kept in Alderney, units of a collective investment scheme in connection with which registration is carried on in Alderney or a vessel registered in a register maintained in Alderney, by the Chairman of the Court of Alderney or, if he is absent or unable to act, by a Jurat of the Court of Alderney,

(b) in relation to realisable property situated in Sark, securities of the Chief Pleas of Sark, other securities registered in a register kept in Sark, units of a collective investment scheme in connection with which registration is carried on in Sark or a vessel registered in a register maintained in Sark, by the Seneschal of Sark or his deputy,

on an application made ex parte in chambers by Her Majesty's Procureur.

NOTES

In section 25,

subsection (2A) was inserted by the Proceeds of Crime and Drug

Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2004, section 2(1), with effect from 7th March, 2005;

the words in square brackets in paragraph (b)(ii) of subsection (6) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 5, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 25 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 6, with effect from 1st January, 2000.

Restraint orders.

26. (1) The Court may by order (in this Law referred to as a **"restraint order"**) prohibit any person from dealing with any realisable property subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply –

(a) to all realisable property held by a specified person, whether the property is described in the order or not, and

(b) to realisable property held by a specified person, being property transferred to him after the making of an order.

(3) This section shall not have effect in relation to any property which is for the time being the subject of a charging order under section 27 or 28.

(4) Where the Court has made a restraint order, it may at any time appoint Her Majesty's Sheriff as receiver –

(a) to take possession of any realisable property, and

(b) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court; and the Court may direct any person having possession of property in respect of which Her Majesty's Sheriff is appointed as receiver under this section to give possession of it to Her Majesty's Sheriff.

(5) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) –

(a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt, and

(b) removing the property from the Bailiwick.

(6) Where a restraint order has been made, a police officer or Her Majesty's Sheriff may seize any realisable property for the purpose of preventing its removal from the Bailiwick; and property so seized shall be dealt with in accordance with the directions of the Court.

NOTE

In its application to external confiscation orders, section 26 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 7, with effect from 1st January, 2000.

Realty charging orders.

27. (1) The Court may make a realty charging order in respect of realisable property consisting of real property situate in the Bailiwick securing the payment to the Crown –

(a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged, and

(b) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Law, a realty charging order is an order made under this section, imposing on any such realisable property consisting of real property situate in the Bailiwick as may be specified in the order a charge for securing the payment of money to the Crown.

(3) A realty charging order shall forthwith be registered –

(a) if the real property in respect of which it is made is in Guernsey, in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe in Guernsey,

(b) if that real property is in Alderney, by noting it against the entry relating to the land concerned in the Alderney Land Register as if an application had been made under section 18(1) of the Alderney Land and Property, etc,

Law, 1949[m] and concurred in by the registered owner of the land as mentioned in section 18(2) of that Law,

(c) if that real property is in Sark, at the Greffe in Sark as if it were a judgment debt ordered to be registered against the real property concerned by an Act of the Court of the Seneschal.

(4) A realty charging order shall have effect as a preliminary vesting order in favour of the Crown (with priority from the date of its registration); except that, notwithstanding any rules of court or rules of customary law to the contrary, the Crown shall remain entitled to levy execution upon, and to recover out of, the defendant's personal property all or any part of any amount which has been, or which may be, ordered to be paid by the defendant under a confiscation order.

NOTES

In its application to external confiscation orders, section 27 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 8, with effect from 1st January, 2000.

In its application to external confiscation orders, the Law is modified by the insertion of section 27A in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 9, with effect from 1st January, 2000.

Personalty charging orders.

28. (1) The Court may make a personalty charging order in respect of any realisable property described in subsection (2) securing the payment to the Crown

m Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; and No. VII of 1994.

of any amount which has been, or which may be, ordered to be paid by the defendant under a confiscation order.

(2) The property referred to in subsection (1) is –

(a) any interest in real property (not itself being real property) situated in the Bailiwick,

(b) any interest in securities of –

(i) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,

(ii) any Bailiwick company,

(iii) any body incorporated outside the Bailiwick, or any country or territory outside the Bailiwick, which are registered in a register kept in the Bailiwick,

(c) any interest in units of any collective investment scheme in connection with which registration is carried on in the Bailiwick,

(d) any interest in a vessel registered in a register maintained in the Bailiwick, and

(e) dividends or interest payable in respect of any property described in paragraph (b) or (c).

(3) A personalty charging order shall have effect as follows –

(a) to the extent that it relates to property within subsection (2)(a) or (d), as an absolute assignment to the Crown of the interest concerned, so as to be effectual in law to pass and transfer to the Crown the rights, remedies and powers specified in paragraphs (a), (b) and (c) of section 2(1) of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979[n],

(b) to the extent that it relates to property within subsection (2)(b), (c) or (e), so as to create in favour of the Crown an interest in that property equivalent to a security interest within the meaning of the Security Interests (Guernsey) Law, 1993[o], and with the same rights, remedies and effects as attach to a security interest created under that Law.

(4) The Committee may from time to time by regulations amend subsection (2); and any such regulations may make consequential amendments to section 25(9).

NOTE

In its application to external confiscation orders, section 28 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 10, with effect from 1st January, 2000.

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n Ordres en Conseil Vol. XXVII, p. 132; Vol. XXXII, p. 324; and No. III of 1993.

o Order in Council No. III of 1993.

Realisation of property

[**Realisation of property.**

29. (1) Where a confiscation order –

(a) has been made under this Law,

(b) is not satisfied, and

(c) is not subject to appeal,

the Court may, on an application by Her Majesty's Procureur, exercise the powers conferred by subsections (2) to (6).

(2) The Court may appoint Her Majesty's Sheriff as receiver in respect of realisable property.

(3) The Court may empower Her Majesty's Sheriff as receiver appointed under subsection (2) or under section 26 –

(a) to enforce any charge imposed under section 27 or 28 on realisable property or on interest or dividends payable in respect of such property, and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 27 or 28, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may order any person having possession of

realisable property to give possession of it to Her Majesty's Sheriff as receiver.

(5) The Court may empower Her Majesty's Sheriff as receiver to realise any realisable property in such manner as the Court may direct.

(6) The Court may –

(a) order any person holding an interest in realisable property to make to Her Majesty's Sheriff as receiver such payment as the Court may direct in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Law, and

(b) on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 27 or 28.

(8) The Court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding an interest in the property to make representations to the Court.

(9) The powers of the Court under this section may be exercised by the Bailiff in chambers sitting unaccompanied by the Jurats (and references to "the Court" shall be construed accordingly); and an application under this section may be made on an ex parte basis.]

NOTES

Section 29 was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 6, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 29 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 11, with effect from 1st January, 2000.

Application of proceeds of realisation and other sums.

30. (1) Subject to subsection (2) –

(a) the proceeds of a realisation of any property under this Law, and

(b) any other sums, being property held by the defendant or the recipient of a gift caught by this Law, in the hands of Her Majesty's Sheriff pursuant to this Law,

shall, after such payments (if any) as the Court may direct have been made out of them, be applied on the defendant's behalf towards the satisfaction of the confiscation order in the same manner as if the confiscation order were a fine imposed by the Court.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of Her Majesty's Sheriff, he shall distribute those sums –

(a) among such of those who held property which has been realised under this Law, and

(b) in such proportions,

as the Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

NOTE

In its application to external confiscation orders, section 30 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 12, with effect from 1st January, 2000.

Exercise by Court or Sheriff of powers for realisation of property.

31. (1) The following provisions apply to the powers conferred on the Court by sections 26 to 30 and on Her Majesty's Sheriff when appointed as receiver under this Law.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available, for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case, the value for the time being of realisable property held by any person by means of the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, the power shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a

debt owed by or on behalf of the Crown or the States of Guernsey or Alderney or the Chief Pleas of Sark.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

NOTE

In its application to external confiscation orders, section 31 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 13, with effect from 1st January, 2000.

Insolvency of defendants

Affairs of a person in a state of désastre.

32. Where the affairs of a person who holds realisable property are declared in a state of désastre –

(a) property for the time being subject to a restraint order, and

(b) any proceeds of property realised by virtue of this Law for the time being in the hands of Her Majesty's Sheriff as receiver appointed under this Law,

shall be excluded from the person's estate for the purposes of those désastre proceedings.

Winding up of a company holding realisable property.

33. (1) Where realisable property is held by a Bailiwick company and an order for the winding up of the company has been made or a resolution has been passed by the company for its voluntary winding up, the functions of the liquidator or provisional liquidator shall not be exercisable in relation to –

(a) property for the time being subject to a restraint order made before the relevant time, or

(b) any proceeds of property realised by virtue of this Law for the time being in the hands of Her Majesty's Sheriff as receiver appointed under this Law.

(2) Where, in the case of a Bailiwick company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by sections 26 to 30 or on Her Majesty's Sheriff as receiver appointed under this Law shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable –

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors, or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies (Guernsey) Law, 1994[p] or the

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p Order in Council No. XXXIII of 1994; No. XIV of 1996.

Companies (Alderney) Law, 1994[q] shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on any property which was subject to a restraint order at the relevant time.

(5) In this section **"the relevant time"** means –

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up,

(b) where such an order has been made and, before the presentation of the application for the winding up of the company, such a resolution had been passed by the company, the time of the passing of the resolution, and

(c) in any other case where such an order had been made, the time of the making of the order.

NOTE

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

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q Order in Council No. XXXIV of 1994.

Restriction on the liability of Her Majesty's Sheriff

Restriction on the liability of Her Majesty's Sheriff.

34. Where Her Majesty's Sheriff as receiver appointed under this Law takes any action –

(a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, and

(b) believing and having reasonable grounds for believing that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

Enforcement of orders made outside the Bailiwick

Enforcement of external confiscation orders.

35. (1) The States may by Ordinance –

[(a) direct, in relation to any country within the British Islands, or in relation to any other country –

- designated by an Order in Council of Her Majesty under section 96 of the Criminal Justice

Act 1988[r] (and any such designation shall continue to have effect for the purposes of this Law, notwithstanding any repeal of section 96, until amended or revoked by Ordinance of the States), or

- designated by Ordinance of the States,

(any country so designated being referred to in this Law as a **"designated country"**) that, subject to such modifications as may be specified, this Part of this Law (except sections 10 and 16) and Part III of this Law shall apply –]

(i) to orders which are made by courts in the designated country for purposes that appear to the States similar to those for which confiscation orders are made under this Law (**"external confiscation orders"**), and which are registered under section 36, and

(ii) to proceedings in which external confiscation orders may be made that have been instituted but not concluded in that country [or to a criminal investigation being conducted there concerning criminal conduct], and

(b) make –

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r An Act of Parliament (1988 c. 33); the relevant Order in Council is the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991 (United Kingdom S.I. 1991/2873).

(i) provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order,

(ii) provision as to evidence or proof of any matter for the purposes of this section and section 36, and

(iii) incidental, consequential and transitional provision, and

(c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds arising out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such an extent as may be specified.

(2) An Ordinance under this section may make different provision in relation to different designated countries and for different cases or classes of circumstances; and a modification made by such an Ordinance may confer power on a person to exercise a discretion.

NOTES

In section 35,

the words in the first pair of square brackets in subsection (1) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7, with effect from 3rd December, 2007;

the words in the second pair of square brackets in subsection (1)

were substituted by the Proceeds of Crime and Drug Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2004, section 2(2), with effect from 7th March, 2005.

In its application to external confiscation orders, section 35 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 14, with effect from 1st January, 2000.

The following Ordinances have been made under section 35:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999;
Criminal Justice (Proceeds of Crime) (Enforcement of Overseas Confiscation Orders) (Amendment) Ordinance, 2002;
Proceeds of Crime and Drug Trafficking (Bailiwick of Guernsey) (Amendment) Ordinance, 2004;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) (Amendment) Ordinance, 2006;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) (Amendment) Ordinance, 2009;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2014.

[**Designation of all countries on 28th July, 2010.**

35A. (1) With effect on and from the 28th July, 2010 any country which is not already a designated country under section 35(1) (including any country which comes into existence after that date) is designated for the purposes of this Law and any Ordinance or subordinate legislation made under this Law.

(2) Without prejudice to the generality of subsection (1), a country which is designated under that subsection is a designated country for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999.]

NOTE

Section 35A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(3), with effect from 28th July, 2010.

Registration of external confiscation orders.

36. (1) On application made by Her Majesty's Procureur on behalf of the government of a designated country, the Royal Court sitting as an Ordinary Court may register an external confiscation order made there if –

(a) it is satisfied that at the time of registration the order is in force and not subject to appeal,

(b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them, and

(c) it is of the opinion that enforcing the order in the Bailiwick would not be contrary to the interests of justice.

(2) In subsection (1) **"appeal"** includes –

(a) any proceedings by way of discharging or setting aside a judgment, and

(b) an application for a new trial or a stay of execution.

(3) The Royal Court sitting as an Ordinary Court shall cancel the registration of an external confiscation order if it appears to it that the order has been satisfied by payment of the amount due under it or by the person against whom it was

made serving a term of imprisonment in default of payment or by any other means.

Interpretation of Part I

Interpretation of Part I.

37. (1) This section shall have effect for the interpretation of this Part of this Law.

(2) Proceedings for an offence are instituted in the Bailiwick when a person is charged with an offence against the laws of the Bailiwick; and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(3) Proceedings for an offence are concluded –

[(aa) if the proceedings are discontinued under paragraph 10 of Schedule 1 (Deferred Prosecution Agreements – General) to the Administration of Justice (Bailiwick of Guernsey) Law, 1991,]

(a) when the defendant is acquitted on all counts,

(b) if he is convicted on one or more counts but the Court decides not to make a confiscation order against him, when it makes that decision, or

(c) if a confiscation order is made against him in those proceedings, when the order is satisfied.

(4) An application under section 13, 14 or 19 is concluded –

(a) if the Court decides not to make a confiscation order against the defendant, when it makes that decision, or

(b) if a confiscation order is made against him as a result of that application, when the order is satisfied.

(5) An application under section 15 or 16 is concluded –

(a) if the Court decides not to vary the confiscation order in question, when it makes that decision, or

(b) if the Court varies the confiscation order as a result of the application, when the order is satisfied.

(6) A confiscation order is satisfied when no amount is due under it.

(7) For the purposes only of section 32, a confiscation order shall be deemed to be satisfied when the defendant in respect of whom it was made has served a term of imprisonment under section 9 without satisfying the amount due under the order.

(8) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

NOTES

In section 37, paragraph (aa) of subsection (3) was inserted by the Criminal Justice (Miscellaneous Amendments – Deferred Prosecution Agreements) (Bailiwick of Guernsey) Ordinance, 2023, section 2, with effect from 26th April, 2024.

In its application to external confiscation orders, section 37 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 15, with effect from 1st January, 2000.

PART II

OFFENCES IN CONNECTION WITH THE PROCEEDS OF CRIMINAL CONDUCT

[**Concealing or transferring criminal property.**

38. (1) A person (**"P"**) is guilty of an offence if –

(a) P –

(i) conceals or disguises criminal property,

(ii) converts or transfers criminal property, or

(iii) removes criminal property from the Bailiwick, and

(b) where the criminal property constitutes or represents another person's benefit from criminal conduct, P knows or suspects that it constitutes or represents such a benefit.]

(2) ...

(3) In [subsection (1)] the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights in respect of it.

[(3A) Where a person discloses to a police officer a suspicion or belief that any property [is criminal property] or discloses to a police officer any matter on which such a suspicion or belief is based –

(a) if he does any act in relation to that property in contravention of [subsection (1)], he does not commit an offence under that subsection if –

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act), or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it, and

(b) the disclosure –

(i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and

(ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.]

[(3B) For the purposes of this section, having possession of any

property shall be taken to be doing an act in relation to it.]

[(3C) In proceedings against a person for [an offence under subsection (1) where the criminal property constitutes or represents another person's benefit from criminal conduct], it is a defence to prove that –

(a) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3A), but

(b) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3A)(a).]

[(3D) In the case of a person who was in employment at the relevant time, subsections (3A) and (3C) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.]

[(3E) No police officer or other person shall be guilty of an offence under [subsection (1)] in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of such conduct.]

(4) A person guilty of an offence under this section is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.

(5) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

NOTES

In section 38,

first, the heading and subsection (1) was substituted and subsection (2) was repealed and, second, the word, parentheses and figure in square brackets in subsection (3), third, the words, parentheses and figure in the first and, fourth, second pairs of square brackets in subsection (3A), fifth, the words in square brackets in subsection (3C) and, sixth, the word, parentheses and figure in square brackets in subsection (3) were all substituted by the Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1, respectively subsection (2), subsection (3), subsection (4)(a), subsection (4)(b), subsection (5) and subsection (6), with effect from 24th July, 2023, subject to the transitional provision in section 3 of the 2023 Ordinance;[1]

subsection (3A), subsection (3B), subsection (3C), subsection (3D) and subsection (3E) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 1(c), with effect from 24th March, 2010.

In its application to external confiscation orders, section 38 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

The following cases have referred to section 38:

McCarthy v. Law Officers of the Crown 2007–08 GLR 414*;*
L and M and N and Mrs B v Credit Suisse AG (Guernsey Branch) [2023]GRC026 (Unreported, Royal Court, 11th July).

[**Assisting another person to retain criminal property.**

39. (1) A person (**"P"**) commits an offence if P enters into or becomes

concerned in an arrangement which P knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.]

(2) ...

(3) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a police officer any matter on which such a suspicion or belief is based –

(a) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if –

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act), or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it, and

(b) the disclosure –

(i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and

(ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(4) In proceedings against a person for an offence under this section, it is a defence to prove –

(a) that he did not know or suspect that the arrangement related to [criminal property],

[(b) that the person did not know or suspect that the arrangement facilitated the acquisition, retention, use or control of any property by or on behalf of another person, or]

(c) that –

(i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement, but

(ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(a).

(5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to

disclosures, and intended disclosures, to a police officer.

(6) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.

(7) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

NOTES

In section 39, first, the heading and subsection (1) was substituted and subsection (2) was repealed and, second, subsection (4)(b) and, third, the words in square brackets in subsection (4)(a) were both substituted by the Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1, respectively subsection (7), subsection (8)(b) and subsection (8)(a), with effect from 24th July, 2023, subject to the transitional provision in section 3 of the 2023 Ordinance.

In its application to external confiscation orders, section 39 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

The following cases have referred to section 39:

Garnet Investments Limited v The Chief Officers FIS, Customs & Excise, Immigration and Nationality Service (2011) (Unreported, Royal Court, 15th February) (Guernsey Judgment No 5/2011)*;*

Taylor v Law Officers of the Crown 2011-12 GLR 81*;*

Chief Officer of Customs etc v Garnet Investments (2011) (Unreported, Court of Appeal, 6th July) (Guernsey Judgment No. 19/2011)*;*

Liang v RBC Trustees (Guernsey) Ltd (Unreported, Royal Court, 10th May) (Guernsey Judgment 20/2018).

[**Acquisition, possession or use of criminal property.**]

40. (1) A person is guilty of an offence if, knowing that any property is [criminal property], he acquires or uses that property or has possession of it.

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of subsection (2) –

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property, and

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

[(4) The provision for any person of services or goods –

(a) which are of assistance to him in criminal conduct, or

(b) which the person providing the services or goods knows or suspects or has reasonable grounds to suspect may assist him in criminal conduct,

shall not be treated as consideration for the purposes of subsection (2).]

(5) Where a person discloses to a police officer a suspicion or belief that any property is [criminal property] or discloses to a police officer any matter on which such a suspicion or belief is based –

(a) if he does any act in relation to that property in contravention of subsection (1), he does not commit an offence under this section if –

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act), or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it, and

(b) the disclosure –

(i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and

(ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(6) For the purposes of this section, having possession of any

property shall be taken to be doing an act in relation to it.

(7) In proceedings against a person for an offence under this section, it is a defence to prove that –

(a) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (5), but

(b) there is reasonable excuse for his failure to make disclosure in accordance with subsection (5)(a).

(8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(9) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of such conduct.

(10) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.

(11) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

NOTES

In section 40,

first, the heading, second the words in square brackets in subsection (1) and, third, those in square brackets in subsection (5) were all substituted by the Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1, respectively subsection (9)(a), subsection (9)(b) and subsection (9)(c), with effect from 24th July, 2023, subject to the transitional provision in section 3 of the 2023 Ordinance;[2]

subsection (4) was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 2(b), with effect from 24th March, 2010.

In its application to external confiscation orders, section 40 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

The following case has referred to section 40:

Taylor v Law Officers of the Crown 2011-12 GLR 81.

Tipping off.

41. (1) A person is guilty of an offence if –

(a) he knows or suspects that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering, and

[(b) he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion.]

(2) A person is guilty of an offence if –

(a) he knows, or suspects that a disclosure (**"the disclosure"**) has been [or will be] made to a police officer under section [38(3A),] 39 or 40, and

[(b) he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion.]

(3) A person is guilty of an offence if –

(a) he knows or suspects that a disclosure of a kind mentioned in sections 39(5) or 40(8) (**"the disclosure"**) has been made, and

[(b) he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion.]

[(3A) Nothing in subsections (1) to (3) makes it an offence for any person to disclose any information or other matter if the disclosure is for any of the purposes set out in subsection (3B).

(3B) The purposes are –

(a) the prevention, detection, investigation or prosecution of criminal offences, whether in the Bailiwick or elsewhere,

(b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the Bailiwick or of any country outside the Bailiwick,

(c) the carrying out –

(i) by the Commission, or

(ii) by a body in another country which carries out any similar function to the Commission,

of its functions,

(d) the carrying out of any functions of any intelligence service, or

(e) the carrying out of any function which appears to the [Committee for Home Affairs] to be a function of a public nature and which it designates as such by order.]

(4) Nothing in subsections (1) to (3) makes it an offence for a professional legal adviser to disclose any information or other matter –

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or

(b) to any person –

(i) in contemplation of, or in connection with, legal proceedings, and

(ii) for the purpose of those proceedings.

[(4A) Subsections (1) to (3) do not apply to a disclosure made –

(a) by the client of a professional legal adviser to that adviser in connection with the seeking of legal advice, or

(b) to any person –

(i) in contemplation of legal proceedings, and

(ii) for the purposes of those proceedings.]

(5) [Subsections (4) and 4(A) do] not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) ...

(7) In this Law **"money laundering"** means doing any act –

(a) which constitutes an offence under section 38, 39 or 40, or

[(b) which constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), or

(c) which constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) which would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b) or (c) if done in the Bailiwick,

irrespective of the value of any property or the amount of any money involved.]

(8) For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct.

(10) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to imprisonment for a term not exceeding [6 months], a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, a fine, or both.

(11) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

NOTES

In section 41,

paragraph (b) of subsection (1), paragraph (b) of subsection (2) and paragraph (b) of subsection (3) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(4)(a), with effect from 28th July, 2010;[3]

the words in the first pair of square brackets in paragraph (a) of subsection (2) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 1, with effect from 26th November, 2008;

the word, figures, letters and parentheses in, first, the second pair of square brackets in paragraph (a) of subsection (2) and, second, square brackets in paragraph (a) of subsection (3) were, respectively, inserted and substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 3(b) and section 3(d), with effect from 24th March, 2010;

subsection (3A) and subsection (3B) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(4)(b), with effect from 28th July, 2010;

the words in square brackets in paragraph (e) of subsection (3)(b) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 7, with effect from 1st May, 2016;

subsection (4A) was inserted, and the words in square brackets in subsection (5) were substituted, by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 1, respectively paragraph (a) and paragraph (b), with effect from 28th May, 2014;

subsection (6) was repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(4)(c), with effect from 28th July, 2010;[4]

paragraph (b) of subsection (7) was substituted, and paragraphs (c), (d) and the words immediately thereafter were inserted, by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 8, with effect from 3rd December, 2007;

the word and figure in square brackets in paragraph (a) of subsection (10) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 9, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 41 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

Restrictions on disclosure under this Part.

42. (1) Information which is disclosed to a police officer –

(a) under section 39,

(b) under section 40, or

(c) under any [regulation made under section 49 or 49A] [or under any rule, instruction or guidance of the Commission made under either of those sections],

shall not be disclosed by that police officer, or by any person who obtains the information directly or indirectly from him, unless its disclosure is permitted under section 43 or 44.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, a fine not exceeding [level 5] on the uniform scale or both.

(3) In proceedings against a person for an offence under this section, it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

(5) The States may by Ordinance amend or repeal this section or any provision hereof.

NOTES

In section 42,

the words in the first pair of square brackets in paragraph (c) of subsection (1) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 10, with effect from 3rd December, 2007;

the words in the second pair of square brackets in paragraph (c) of subsection (1) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 2, with effect from 3rd December, 2007;

the word and figure in square brackets in subsection (2) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 11, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 42 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

Disclosure for purposes within the Bailiwick.

43. (1) Section 42 does not prohibit the disclosure of information to a person in the Bailiwick for the purposes of the investigation of crime in the Bailiwick or for the purposes of criminal proceedings in the Bailiwick.

(2) Section 42 does not prohibit the disclosure of information, for other purposes in the Bailiwick, to –

(a) Her Majesty's Procureur,

(b) the Commission,

(c) a police officer, or

(d) any other person who is for the time being authorised in writing by Her Majesty's Procureur to obtain that information.

(3) The States may by Ordinance amend or repeal this section or any provision hereof.

NOTE

In its application to external confiscation orders, section 43 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

Disclosure for purposes outside the Bailiwick.

44. (1) Section 42 does not prohibit the disclosure of information if –

(a) ...

(b) the information is disclosed –

(i) for the purposes of the investigation of crime outside the Bailiwick or for the purposes of criminal proceedings outside the Bailiwick, or

(ii) to a competent authority outside the Bailiwick,

and the expression **"competent authority"** means any person or body, or any class or description of person or body, prescribed for the purposes of this section by regulations of the Committee.

(2) ...

(3) ...

(4) ...

[(2)] The States may by Ordinance amend or repeal this section or any provision hereof.

[[(3)] In this section **"investigation"**, in relation to crime, includes the prevention of crime and also includes the detection of crime.]

NOTES

In section 44,

paragraph (a) of subsection (1) was repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(a), with effect from 31st July, 2002;

subsection (2), subsection (3) and subsection (4) were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(b), with effect from 31st July, 2002;

subsection (5) was renumbered as subsection (2) by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(c), with effect from 31st July, 2002;

subsection (6) (which was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 1999, section 1, with effect from 24th November, 1999) was renumbered as subsection (3) by

the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(c), with effect from 31st July, 2002.

In its application to external confiscation orders, section 44 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

In accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Designation of Competent Authorities) Regulations, 2003, section 1, Schedule, the following shall be competent authorities for the purpose of subsection (1)(b)(ii), with effect from 5th November, 2003:

> *the Criminal Assets Bureau established by an Act of Parliament of the Republic of Ireland entitled the Criminal Assets Bureau Act 1996;*
>
> *the Assets Recovery Agency established by an Act of Parliament of the United Kingdom entitled the Proceeds of Crime Act 2002.*

In accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Designation of Competent Authorities) Regulations, 2004, regulation 1, Schedule, the following shall be a competent authority for the purpose of subsection (1)(b)(ii), with effect from 17th March, 2004:

> *the Civil Recovery Unit of the Scottish Executive.*

[*Interpretation of Part II*

Interpretation of Part II.

44A. (1) This section has effect for the interpretation of this Part of this Law.

(2) For the purposes only of this Part of this Law, **"criminal conduct"** includes drug trafficking within the meaning of section 1(2).

[(3) For the purposes of this Part of this Law, **"criminal property"** means property constituting a person's proceeds of criminal conduct, or representing such proceeds (in whole or part and whether directly or indirectly).

(4) For the purposes of subsection (3) it is immaterial –

(a) who carried out the criminal conduct,

(b) who benefitted from the criminal conduct, and

(c) whether the criminal conduct occurred before or after the coming into force of this provision.]]

NOTES

Section 44A, and the cross-heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 12, with effect from 3rd December, 2007.

In section 44A, subsection (3) was inserted by the Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(10), with effect from 24th July, 2023, subject to the transitional provision in section 3 of the 2023 Ordinance.

PART III
MISCELLANEOUS AND SUPPLEMENTAL

Investigations into criminal conduct

Order to make material available.

45. (1) Subject to subsection (10), a police officer may for the purposes of an investigation into whether any person has [engaged in or benefited from] criminal conduct or into the extent or whereabouts of the proceeds of criminal conduct, apply to the Bailiff for an order under subsection (2) in relation to particular material or material of a particular description.

(2) If on such an application the Bailiff is satisfied that the

conditions in subsection (4) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall –

(a) produce it to a police officer for him to take away, or

(b) give a police officer access to it,

within such period as the order may specify; provided always that this subsection has effect subject to section [48(11)].

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the Bailiff that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are –

(a) that there are reasonable grounds for suspecting that a specified person has [engaged in or benefited from] criminal conduct,

(b) that there are reasonable grounds for suspecting that the material to which the application relates –

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, and

(ii) does not consist of or include items subject to legal professional privilege [or excluded

material], and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard –

(i) to the benefit likely to accrue to the investigation if the material is obtained, and

(ii) to the circumstances under which the person in possession of material holds it,

that the material should be produced or that access to it should be given.

(5) Where the Bailiff makes an order under subsection (2)(b) in relation to material on any premises he may, on the application of a police officer, subject to subsection (10), order any person who appears to him to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(6) An application under subsection (1) or (5) may be made ex parte to the Bailiff in chambers.

(7) Provision may be made by rules of Court as to –

(a) the discharge and variation of orders under this section, and

(b) proceedings relating to such orders.

(8) Where the material to which an application under subsection

(1) relates consists of information contained in a computer –

(a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and

(b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(9) An order under subsection (2) –

(a) shall not confer any right to production of, or access to, items subject to legal professional privilege [or excluded material],

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and

(c) may be made in relation to material in the possession of the States of Guernsey, States of Alderney or Chief Pleas of Sark.

(10) No application for an order under this section may be made without the consent of Her Majesty's Procureur.

NOTES

In section 45,

the words in square brackets in, first, subsection (1) and, second, in the first pair of square brackets in subsection (4) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 13(a) and section 13(b), with effect from 3rd December, 2007;

the figures in square brackets in subsection (2) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 14, with effect from 3rd December, 2007;

the words in the second pair of square brackets in subsection (4) and in the square brackets in paragraph (a) of subsection (9) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 15, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 45 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

[**Offences in relation to orders under section 45.**

45A. (1) A person commits an offence if the person fails to comply with a requirement imposed upon that person by or under an order made under section 45 (a **"section 45 order"**).

(2) It is a defence for a person charged with an offence under subsection (1) to prove (for the avoidance of doubt, on a balance of probabilities) that the person had a reasonable excuse for the failure to comply with the requirement.

(3) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale, or to both.

(4) A person commits an offence if, in purported compliance with a section 45 order, the person –

(a) makes a statement, or provides any information or document, which that person knows to be false or misleading in a material particular, or

(b) recklessly makes a statement, or recklessly provides any information or document, which is false or misleading in a material particular.

(5) A person commits an offence if the person obstructs any person acting under the authority of a section 45 order.

(6) A person guilty of an offence under subsection (4) or (5) is liable –

(a) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both.]

NOTE

Section 45A was inserted by the Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(11), with effect from 24th July, 2023, subject to the transitional provision in section 3 of the 2023 Ordinance.

Authority for search.

46. (1) Subject to subsection (6), a police officer may, for the purposes of an investigation into whether any person has [engaged in or benefited from] criminal conduct or into the extent or whereabouts of the proceeds of criminal

conduct, apply to the Bailiff for a warrant under this section in relation to specified premises.

(2) On such an application the Bailiff may issue a warrant authorising a police officer to enter and search the premises if the Bailiff is satisfied –

(a) that an order made under section 45 in relation to material on the premises has not been complied with,

(b) that the conditions in subsection (3) are fulfilled, or

(c) that the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2)(b) are –

(a) that there are reasonable grounds for suspecting that a specified person has [engaged in or benefited from] criminal conduct,

(b) that the conditions in section 45(4)(b) and (c) are fulfilled in relation to any material on the premises, and

(c) that it would not be appropriate to make an order under that section in relation to the material because –

(i) it is not practicable to communicate with any person entitled to produce the material,

(ii) it is not practicable to communicate with any person entitled to grant access to the material or

entitled to grant entry to the premises on which the material is situated, or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer can secure immediate access to the material.

(4) The conditions referred to in subsection (2)(c) are –

(a) that there are reasonable grounds for suspecting that a specified person has [engaged in or benefited from] criminal conduct,

(b) that there are reasonable grounds for suspecting that there is on the premises any such material relating –

(i) to the specified person, or

(ii) to the question of whether that person has [engaged in or benefited from] criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct,

as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularised, and

(c) that –

(i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(ii) entry to the premises will not be granted unless a warrant is produced, or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(5) Where a police officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal professional privilege [or excluded material], which is likely to be of value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.

(6) No application for a warrant under this section may be made without the consent of Her Majesty's Procureur.

NOTES

In section 46,

the words in square brackets in subsection (1), subsection (3) and in the first and second pairs of square brackets in subsection (4) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 13(c), section 13(d), section 13(e) and section 13(f), with effect from 3rd December, 2007;

the words in square brackets in subsection (5) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 15, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 46 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

[**Provisions supplementary to sections 45 and 46.**

46A. (1) In sections 45 and 46 –

"excluded material", subject to subsections (2) and (3), means –

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence,

(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence, and

(c) journalistic material which a person holds in confidence and which consists –

(i) of documents, or

(ii) of records other than documents,

"items subject to legal professional privilege", subject to subsection (4), means –

(a) communications between a professional legal adviser and his client or any person representing his client

made in connection with the giving of legal advice to the client,

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, and

(c) items enclosed with or referred to in such communications and made –

(i) in connection with the giving of legal advice, or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them,

"premises" includes any place and, in particular, includes –

(a) any vehicle, vessel, aircraft or hovercraft,

(b) any offshore installation, and

(c) any tent or movable structure.

(2) A person holds material other than journalistic material in

confidence for the purposes of this section if he holds it subject –

(a) to an express or implied undertaking to hold it in confidence, or

(b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, whether passed before or after the commencement of this Law.

(3) A person holds journalistic material in confidence for the purposes of this section if –

(a) he holds it subject to such an undertaking, restriction or obligation, and

(b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

(4) Items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege.

(5) In this section **"personal records"** means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating –

(a) to his physical or mental health,

(b) to spiritual counselling or assistance given or to be given to him, or

(c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who –

(i) by reason of his office or occupation has responsibilities for his personal welfare, or

(ii) by reason of an order of a court has responsibilities for his supervision.

(6) Subject to subsection (7), in this section **"journalistic material"** means material acquired or created for the purposes of journalism.

(7) Material is only journalistic material for the purposes of this section if it is in the possession of a person who acquired or created it for the purposes of journalism.

(8) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.]

NOTE

Section 46A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 16, with effect from 3rd December, 2007.

Offence of prejudicing an investigation.

47. (1) Where, in relation to an investigation of a nature described in section 45(1) or 46(1) –

(a) an order under section 45 has been made or has been applied for and has not been refused, or

(b) a warrant under section 46 has been issued,

a person is guilty of an offence if, knowing or suspecting that the investigation is taking place, he makes any disclosure which is likely to prejudice the investigation.

(2) In proceedings against a person for an offence under this section it is a defence to prove –

(a) that he did not know or suspect that the disclosure was likely to prejudice the investigation, or

(b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter –

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or

(b) to any person –

(i) in contemplation of, or in connection with, legal proceedings, and

(ii) for the purpose of those proceedings.

(4) Subsection (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(5) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, a fine, or both.

NOTE

In its application to external confiscation orders, section 47 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

[**Offence of destruction etc of documents relevant to an investigation.**

47A. (1) Where a person (**"P"**) –

(a) knows or suspects that an investigation of a nature described in section 45(1) or 46(1) is being or is likely to be carried out, and

(b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which P knows or

suspects are or would be relevant to such an investigation,

P shall be guilty of an offence unless P proves that he or she had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under subsection (1) shall –

(a) on conviction on indictment, be liable to imprisonment for a term not exceeding seven years or to a fine or to both, and

(b) on summary conviction, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both.]

NOTE

Section 47A was inserted by the Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(12), with effect from 24th July, 2023, subject to the transitional provision in section 3 of the 2023 Ordinance.

[**Disclosure of information held by States departments.**

48. (1) Subject to subsection (4), the Court may on an application by Her Majesty's Procureur order any material mentioned in subsection (3) which is in the possession of a States department to be produced to the Court within such period as the Court may specify.

(2) The power to make an order under subsection (1) is exercisable

if –

(a) the powers conferred on the Court by sections 26(1), 27(1) and 28(1) are exercisable by virtue of section 25(1), or

(b) those powers are exercisable by virtue of section 25(2) and the Court has made a restraint order or charging order which in either case has not been discharged,

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 25(4) applies for the purposes of this section as it applies for the purposes of sections 26, 27 and 28.

(3) The material referred to in subsection (1) is any material which –

(a) has been submitted to an officer of a States department by the defendant or by a person who has at any time held property which was realisable property,

(b) has been made by an officer of a States department in relation to the defendant or such a person, or

(c) is correspondence which passed between an officer of a States department and the defendant or such a person,

and an order under subsection (1) may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by sections 26 to 29 or on Her Majesty's Sheriff as receiver appointed under section 26 or 29 or in pursuance of a charging order.

(5) The Court may by order authorise the disclosure to Her Majesty's Sheriff as receiver of any material produced under subsection (1) or any part of such material; but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the States department to make representations to the Court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under any provision of this Law of Her Majesty's Sheriff as receiver or the Court.

(7) The Court may by order authorise the disclosure to a person mentioned in subsection (8) of any material produced under subsection (1) or any part of any such material; but the Court shall not make an order under this subsection unless –

(a) a reasonable opportunity has been given for an officer of the States department to make representations to the Court, and

(b) it appears to the Court that the material is likely to be of value in exercising functions relating to the investigation of crime.

(8) The persons referred to in subsection (7) are –

(a) Her Majesty's Procureur,

(b) a police officer.

(9) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to –

(a) crime,

(b) whether any person has engaged in or benefited from criminal conduct, or

(c) the extent or whereabouts of the proceeds of criminal conduct.

(10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by statute or contract or otherwise.

(11) An order under subsection (1) and, in the case of material in the possession of a States department, an order under section 45 may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

(12) The person on whom such an order is served –

(a) shall take all reasonable steps to bring it to the attention of the officer concerned, and

(b) if the order is not brought to that officer's attention within the period referred to in subsection (1), shall report the reasons for the failure to the Court,

and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a).

(13) In this section **"States department"** means any department, council or committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark.]

NOTES

Section 48 was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 17, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 48 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

[*Customer information orders*

Customer information orders.

48A. (1) The Bailiff may, on an application made by Her Majesty's Procureur or by a police officer, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a customer information order must state that a person specified in the application is subject to an investigation into –

(a) whether he has engaged in or benefited from criminal conduct,

(b) the extent or whereabouts of the proceeds of criminal conduct, or

(c) money laundering.

(3) The application must also state that –

(a) the order is sought for the purposes of the investigation,

(b) the order is sought against the financial services business specified in the application.

(4) An application for a customer information order may specify –

(a) all financial services businesses,

(b) a particular description of financial services business, or

(c) a particular financial services business.

(5) A customer information order is an order that a financial services business covered by the application for the order must, on being required to do so by notice in writing given by Her Majesty's Procureur or a police officer, provide any such customer information as it has relating to the person specified in the application.

(6) A financial services business required to provide information

under a customer information order must provide the information to Her Majesty's Procureur or a police officer in such manner, and at or by such time, as they may require.

(7) If a financial services business on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of authority is produced to it.

(8) A customer information order –

(a) may be made ex parte and in chambers,

(b) may be made notwithstanding that notice of the application for it has not been given to any other person, and

(c) may be made subject to such terms and conditions as the Bailiff thinks fit.]

NOTE

Section 48A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[**Meaning of customer information.**

48B. (1) **"Customer information"**, in relation to a person and a financial services business, is information as to whether the person holds, or has held, an account or safe deposit box at the financial services business (whether solely or jointly with another) and (if so) information as to –

(a) the matters specified in subsection (2) if the person is an individual,

(b) the matters specified in subsection (3) if the person is a body corporate.

(2) The matters referred to in subsection (1)(a) are –

(a) the account number or the number of any safe deposit box,

(b) the person's full name,

(c) his date of birth,

(d) his most recent home and business address and any previous such address,

(e) in the case of an account, the date on which he began to hold the account and, if he has ceased to hold the account, the date on which he did so,

(f) in the case of a safe deposit box, the date on which the box was made available to him and, if the box has ceased to be available to him, the date on which it so ceased,

(g) such evidence of his identity as was obtained by the financial services business under or for the purposes of any legislation relating to money laundering,

(h) the full name, date of birth and most recent home and business address, and any previous such address, of any person –

(i) who is or has been a signatory to the account, or

(ii) who holds or has held an account at the financial services business jointly with him,

(i) the account number of any other account held at the financial services business to which he is a signatory and details of the person holding the other account,

(j) the current balance of each account identified, and

(k) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the accounts identified took place.

(3) The matters referred to in subsection (1)(b) are –

(a) the account number or the number of any safe deposit box,

(b) the person's full name,

(c) a description of any business which the person carries on,

(d) the country in which it is incorporated or otherwise

established and any number allocated to it,

(e) its registered office and any previous registered office, or anything similar under the legislation of the country of incorporation or establishment,

(f) any address from which it conducts or has conducted business,

(g) in the case of an account, the date on which it began to hold the account and, if it has ceased to hold the account, the date on which it did so,

(h) in the case of a safe deposit box, the date on which the box was made available to it and, if the box has ceased to be available to it, the date on which it so ceased,

(i) such evidence of its identity as was obtained by the financial services business under or for the purposes of any legislation relating to money laundering,

(j) the full name, date of birth and most recent home and business address and any previous such address of any person who is or has been a signatory to the account,

(k) the current balance of each account identified, and

(l) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the accounts identified took place.

(4) In this section **"money laundering"** has the meaning given by section 49(6).

(5) In this Law a **"safe deposit box"** includes any procedure under which a financial services business provides a facility to hold items for safe keeping on behalf of another person.

(6) The [Committee for Home Affairs] may by regulations provide for information of a class or description specified in the regulations –

(a) to be customer information, or

(b) no longer to be customer information.]

NOTES

Section 48B was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

In section 48B, the words in square brackets in subsection (6) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 7, with effect from 1st May, 2016.

[**Requirements for making of customer information order.**

48C. (1) These are the requirements for the making of a customer information order.

(2) In the case of an investigation into whether a person has engaged in or benefited from criminal conduct or the extent or whereabouts of the proceeds of criminal conduct, there must be reasonable grounds for suspecting that

the person specified in the application for the order has engaged in or benefited from criminal conduct.

(3) In the case of an investigation into money laundering, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(4) In the case of any investigation, there must be reasonable grounds for believing that the customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.]

NOTE

Section 48C was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[**Offences in relation to customer information orders.**

48D. (1) A financial services business commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under a customer information order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(3) A financial services business commits an offence if, in purported compliance with a customer information order, it –

(a) makes a statement which it knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.]

NOTE

Section 48D was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[**Statements.**

[**48E.** A statement made by a financial services business in response to a customer information order –

(a) may be used in evidence against it in proceedings other than criminal proceedings, and

(b) may not be used in evidence against it in criminal

proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that financial services business, or

(ii) in proceedings –

(A) under Part I,

(B) for an offence under section 48D(1) or (3),

(C) for some other offence where, in giving evidence, the financial services business makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(D) for perjury, or

(E) for perverting the course of justice.]]

NOTE

Section 48E (which was originally inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

[**Disclosure of information.**

48F. A customer information order has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such an order.]

NOTE

Section 48F was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[**Supplementary.**

48G. (1) The Court may make rules in respect of the practice and procedure to be followed in connection with proceedings relating to customer information orders.

(2) An application to discharge or vary a customer information order may be made to the Court by –

(a) Her Majesty's Procureur,

(b) any person affected by the order.

(3) The Court may, subject to such terms and conditions as it thinks fit –

(a) discharge the order,

(b) vary the order.

(4) The powers of the Court under this section to discharge or vary a customer information order may be exercised by the Bailiff in chambers sitting unaccompanied by the Jurats; and references to **"the Court"** shall be construed accordingly.

(5) A police officer may not make an application for a customer information order unless he is authorised to do so by Her Majesty's Procureur.]

NOTE

Section 48G was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[*Account monitoring orders*

Account monitoring orders.

48H. (1) The Bailiff may, on an application made by Her Majesty's Procureur or by a police officer, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for an account monitoring order must state that a person specified in the application is subject to an investigation into –

(a) whether he has engaged in or benefited from criminal conduct,

(b) the extent or whereabouts of the proceeds of criminal conduct, or

(c) money laundering.

(3) The application must also state that –

(a) the order is sought for the purposes of the investigation,

(b) the order is sought against the financial services business specified in the application in relation to account information of the description so specified.

(4) In this Law **"account information"** is information relating to an account held at the financial services business specified in the application by the person so specified (whether solely or jointly with another).

(5) The application for an account monitoring order may specify information relating to –

(a) all accounts held by the person specified in the application for the order at the financial services business so specified,

(b) a particular description of accounts so held, or

(c) a particular account so held.

(6) An account monitoring order is an order that the financial services business specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to a police officer in the manner, and at or by the time, stated in the order.

(7) The period stated in an account monitoring order must not exceed a period of 90 days beginning on the day on which the order is made.

(8) An account monitoring order –

(a) may be made ex parte and in chambers,

(b) may be made notwithstanding that notice of the application for it has not been given to any other person, and

(c) may be made subject to such terms and conditions as the Bailiff thinks fit.]

NOTE

Section 48H, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[**Requirements for making of account monitoring order.**

48I. (1) These are the requirements for the making of an account monitoring order.

(2) In the case of an investigation into whether a person has engaged in or benefited from criminal conduct or the extent or whereabouts of the proceeds of criminal conduct, there must be reasonable grounds for suspecting that the person specified in the application for the order has engaged in or benefited from his criminal conduct.

(3) In the case of an investigation into money laundering, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(4) In the case of any investigation, there must be reasonable grounds for believing that the account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.]

NOTE

Section 48I was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[**Offences in relation to account monitoring orders.**

48J. (1) A financial services business commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under an account monitoring order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(3) A financial services business commits an offence if, in purported compliance with an account monitoring order, it –

(a) makes a statement which it knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or

misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.]

NOTE

Section 48J was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[**Statements.**

[**48K.** A statement made by a financial services business in response to an account monitoring order –

(a) may be used in evidence against it in proceedings other than criminal proceedings, and

(b) may not be used in evidence against it in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that financial services business, or

(ii) in proceedings –

(A) under Part I,

(B) for an offence under section 48J(1) or (3),

(C) for some other offence where, in giving evidence, the financial services business makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(D) for perjury, or

(E) for perverting the course of justice.]]

NOTE

Section 48K (which was originally inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

[**Disclosure of information.**

48L. An account monitoring order has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such an order.]

NOTE

Section 48L was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[**Supplementary.**

48M. (1) The Court may make rules in respect of the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

(2) An application to discharge or vary an account monitoring order may be made to the Court by –

(a) Her Majesty's Procureur,

(b) any person affected by the order.

(3) The Court may, subject to such terms and conditions as it thinks fit –

(a) discharge the order,

(b) vary the order.

(4) The powers of the Court under this section to discharge or vary an account monitoring order may be exercised by the Bailiff in chambers sitting unaccompanied by the Jurats; and references to **"the Court"** shall be construed accordingly.

(5) A police officer may not make an application for an account monitoring order unless he is authorised to do so by Her Majesty's Procureur.]

NOTE

Section 48M was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[*Failure to prevent money laundering*

Offence of failure to prevent money laundering.

48MA. (1) A licensee (**"B"**) is guilty of an offence if a person is engaged in money laundering when acting in the capacity of a person associated with B.

(2) It is a defence for B to prove that when the money laundering occurred, B had in place prevention procedures in relation to the activities of the person associated with B.

(3) A person is engaged in money laundering for the purposes of this section if the person engages in conduct which constitutes money laundering, whether or not the person has been convicted of an offence in relation to that conduct; and for this purpose, **"conduct"** includes acts and omissions.

(4) A person acts in the capacity of a person associated with B if that person is –

(a) an employee of B who is acting in the capacity of an employee,

(b) an agent of B (other than an employee) who is acting in the capacity of an agent,

(c) any other person who performs services for or on behalf of B who is acting in the capacity of a person performing such services, or

(d) a customer of B, or an agent of a customer of B, in relation to any service performed by or on behalf of B.

(5) In determining whether B has adequately maintained and applied prevention procedures in relation to the activities of the person associated with B, the Court may take account of –

(a) any relevant Code of Practice or guidance issued by the Commission that applies to B, and

(b) any guidance published by the Committee under section 48MB(1) about prevention procedures.

(6) For the purposes of subsection (4)(c), the question of whether or not the person is a person who performs services for or on behalf of B is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and B.

(7) In this section –

(a) **"customer"** means a person with a business relationship with another person carrying on a financial services business, and

(b) **"employee"** means an individual who has entered into or who works under (or where the employment has ceased, who worked under) a contract of employment,

(c) **"licensee"** has the meaning given in the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,

(d) **"money laundering"** has the meaning given by section 41(7), and includes **"drug money laundering"** within the meaning of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, and section 41(7) shall be construed accordingly, and

(e) **"prevention procedures"** means procedures designed to prevent persons acting in the capacity of a person associated with B being engaged in money laundering.

(8) A person who commits an offence under this section is liable on conviction –

(a) if an individual, to imprisonment for a term not exceeding two years, or to a fine or to both,

(b) otherwise, to a fine.]

NOTE

Section 48MA and the cross-heading thereto were inserted by the Criminal Justice (Miscellaneous Amendments - Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023, section 1(2), with effect from 26th April, 2024.

[**Publication of Guidance.**

48MB. (1) Subject to subsection (3), the Committee shall publish

guidance (in such manner as the Committee considers appropriate) about prevention procedures within the meaning of section 48MA(7)(e).

(2) For the avoidance of doubt, the Committee may, from time to time, publish revisions to guidance under this section or revised guidance.

(3) The Committee must consult the States of Guernsey Committee for Home Affairs, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark before publishing guidance under this section.]

NOTES

Section 48MB was inserted by the Criminal Justice (Miscellaneous Amendments - Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023, section 1(2), with effect from 26th April, 2024.

The following Handbook containing the guidance referred to in this section has been issued by the Guernsey Financial Services Commission:

Handbook on Countering Financial Crime (AML/CFT/CPF) (G.S.I. No. 43 of 2024).

[*Code of practice*

Code of practice for Part III.

48N. (1) The [Committee for Home Affairs] may issue a code of practice in connection with the exercise by police officers of their functions under this Part.

(2) The code shall come into force on the date specified therein.

(3) The code shall be laid before a meeting of the States as soon as possible after being issued; and, if at that or the next meeting the States resolve to

annul the code, then it shall cease to have effect, but without prejudice to anything done under it or to the issuing of a new code.

(4) The [Committee for Home Affairs] may revise the whole or any part of the code and issue the code as revised; and subsections (2) and (3) apply (with appropriate modifications) to the revised code as they apply to the original code.

(5) A failure by a police officer to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.

(6) The code is admissible in evidence in criminal and civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.]

NOTES

Section 48N, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

In section 48N, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 7, with effect from 1st May, 2016.

[*Seized Assets Fund*

Seized Assets Fund.

48O. (1) There shall continue to be a fund held by the States of Guernsey known as the Seized Assets Fund (**"the Fund"**).

(2) There shall be paid into the Fund –

(a) proceeds of the disposition of seized assets,

(b) money paid to the States of Guernsey (or any committee thereof) by a jurisdiction outside the Bailiwick in respect of seized assets, and

(c) any other sums payable into the Fund under any other enactment.

(3) There shall be deducted from all payments into the Fund –

(a) costs associated with the relevant seized assets' seizure, confiscation or forfeiture (as the case may be),

(b) sums paid to victims of offences associated with the relevant seized assets, in reimbursement of losses suffered by those victims in consequence of those offences, and

(c) sums paid under an asset sharing agreement[, asset return agreement, asset sharing arrangement or asset return arrangement] in respect of the relevant seized assets.

(4) All monies in the account of the Fund shall be divided and paid out in accordance with Schedule 11 [(Seized Assets Fund)].]

NOTES

Section 48O, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime – Seized Assets Fund) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024, section 1(2), with effect from 26th April,

2024, subject to the transitional provision in section 2 of the 2024 Ordinance.

In section 48O, the words in square brackets in, first, subsection (3)(c) and, second, subsection (4) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2025, respectively section 1(2) and section 1(3), with effect from 28th January, 2025.

[**Seized Assets Management Board.**

48P. (1) There is established a body to be known as the Seized Assets Management Board (**"the Board"**).

(2) A purpose of establishing the Board is to facilitate compliance with relevant international standards within the meaning of section 4 of the Economic Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022.

(3) Schedule 12 [(Seized Assets Management Board)] shall have effect as respects the constitution of the Board.

(4) The functions of the Board are –

(a) to oversee the administration of the Fund,

(b) to make deductions from payments into the Fund for the purpose of making of payments and recovering costs in accordance with section 48O(3), and the division of monies in the Fund in accordance with Schedule 11,

(c) to report to the States on the Fund in accordance with section 48Q,

(d) to publish or arrange for the publication on the States of Guernsey website from time to time such other information relating to the Fund as it thinks fit for the purpose of ensuring that the public is properly informed about the Fund,

(e) any functions assigned to it by or under any enactment or any Resolution of the States, and

(f) such other functions as are incidental or conducive to, or otherwise connected with, any of the above.]

NOTES

Section 48P was inserted by the Criminal Justice (Proceeds of Crime – Seized Assets Fund) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024, section 1(2), with effect from 26th April, 2024, subject to the transitional provision in section 2 of the 2024 Ordinance.

In section 48P, the words in square brackets in subsection (3) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2025, section 1(4), with effect from 28th January, 2025.

[**Seized Assets Management Board: reporting.**

48Q. (1) At such periodicity as the States may from time to time resolve, or in the absence of such resolution, once a year within the first three months of the year, the Board shall report to the States –

(a) on the Fund in general, and

(b) on the Internal Fund (within the meaning of paragraph 1 of Schedule 11), including, but not limited to, the

persons or classes of persons to whom, and the purposes for which, monies have been paid out thereof,

in such terms, subject to regulations made under subsection (2), as it thinks fit.

(2) The Committee for Home Affairs may make regulations making provision in respect of the duty of the Board to report to the States on the Fund and the Internal Fund imposed by subsection (1).

(3) Without limitation, regulations under subsection (2) may make provision in relation to the categories of information to be included in, and excluded from, such reports.]

NOTE

Section 48Q was inserted by the Criminal Justice (Proceeds of Crime – Seized Assets Fund) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024, section 1(2), with effect from 26th April, 2024, subject to the transitional provision in section 2 of the 2024 Ordinance.

[**Exclusion of liability.**

48R. (1) Subject to subsection (2), no person (**"P"**) is to be –

(a) liable in damages, or

(b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done in the discharge or purported discharge of P's functions, or functions delegated to P, under sections 48O to 48Q, or Schedule 11 or 12, unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.]

NOTE

Section 48R was inserted by the Criminal Justice (Proceeds of Crime – Seized Assets Fund) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024, section 1(2), with effect from 26th April, 2024, subject to the transitional provision in section 2 of the 2024 Ordinance.

[**Interpretation.**

48S. (1) In sections 48O to 48R –

[**"asset return agreement"** means an agreement between the States of Guernsey and the government of a jurisdiction outside the Bailiwick for the return of seized assets, or the proceeds of disposition of seized assets,]

[**"asset return arrangement"** means an arrangement (however described) entered into by His Majesty's Procureur and an overseas authority for the return of seized assets, or the proceeds of disposition of seized assets,]

"asset sharing agreement" means an agreement between the States of Guernsey and the government of a jurisdiction outside the Bailiwick in respect of the reciprocal sharing of the proceeds of disposition of seized assets,

[**"asset sharing arrangement"** means an arrangement (however described) entered into by His Majesty's Procureur and an overseas authority in respect of the reciprocal sharing of seized assets or the proceeds of disposition of seized assets,]

[**"overseas authority"** means –

(a) a court or tribunal of a country outside the Bailiwick,

(b) the government of a country outside the Bailiwick, or

(c) any other authority recognised by the government of, or under the laws of, a country outside the Bailiwick as the appropriate authority for the entering into of asset sharing arrangements and asset return arrangements,]

"proceeds of the disposition of seized assets" means in the case of property other than money, the proceeds of sale on disposition of the property, and in the case of property that is money, the amount of that money,

"property" includes real property, and

"seized assets" means any property confiscated, forfeited or seized under any of the enactments specified in subsection (2), including, for the avoidance of doubt –

(a) any subordinate legislation made thereunder, and

(b) for the purposes of the [definitions of "asset sharing agreement", "asset return agreement", "asset return arrangement" and "asset sharing arrangement"], any equivalent enactment, and subordinate legislation made thereunder, in force in the relevant jurisdiction outside the Bailiwick.

(2) The enactments referred to in the definition of **"seized assets"**

in subsection (1) are –

(a) the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

(b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

(c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

(d) the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001,

(e) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

(f) the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006,

(g) the Forfeiture of money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, [...]

(h) the Cash Controls (Bailiwick of Guernsey) Law, 2007[, and]

[(i) the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023.]

(3) The Committee may amend subsection (2) by regulations.]

NOTES

Section 48S was inserted by the Criminal Justice (Proceeds of Crime – Seized Assets Fund) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024, section 1(2), with effect from 26th April, 2024, subject to the transitional provision in section 2 of the 2024 Ordinance.

In section 48S, first, the definitions of the expressions "asset return agreement", "asset return arrangement", "asset sharing arrangement" and "overseas authority" in subsection (1) were inserted, second, the words in square brackets in the definition of the expression "seized assets" in that subsection were substituted and, third, the word omitted in square brackets at the end of subsection (2)(g) was repealed, the punctuation and word in square brackets at the end of subsection (2)(h) were substituted and paragraph (1) of subsection (3) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2025, respectively section 1(5), section 1(6) and section 1(7), with effect from 28th January, 2025.

Financial services businesses

[**Financial services businesses and the duties thereof.**

49. (1) [Subject to subsection (1A),] the businesses specified in Schedule 1 are financial services businesses for the purposes of this Law.

[(1A) For the avoidance of doubt, a business is a financial services business only in respect of the businesses specified in Schedule 1, and only to the extent that it conducts one or more of those businesses.]

(2) The [Policy & Resources Committee] may by regulation amend Schedule 1 by adding, deleting or amending any class or description of business.

(3) …

(4) …

(5) …

(6) …

(7) …

(8) …

(9) …

(10) …

(11) ….]

NOTES

Section 49 was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 19, with effect from 3rd December, 2007.

In section 49,

first, the words in square brackets in subsection (1) and, second, subsection (1A) were inserted and, third, subsections (3) to (11) were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1, respectively paragraph (2), paragraph (3) and paragraph (4), with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance;[5]

the words "Policy & Resources Committee" in square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with

effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

In its application to external confiscation orders, section 49 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

The following Regulations have been made under section 49:

Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008;
Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2009;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010;
Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2010;
Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2010;
Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2013;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2013;
Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2013;
Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2014;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Regulations, 2023;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2023.

[*Relevant businesses*

Relevant businesses and the duties thereof.

49A. (1) [Subject to subsection (1A),] the businesses specified in Schedule 2 are relevant businesses for the purposes of this Law.

[(1A) For the avoidance of doubt, a business is a relevant business only in respect of the businesses specified in Schedule 2, and only to the extent that it

conducts one or more of those businesses.]

(2) The [Policy & Resources Committee] may by regulation amend Schedule 2 by adding, deleting or amending any class or description of business.

(3) …

(4) …

(5) …

(6) …

(7) …

(8) …

(9) …

(10) …

(11) …]

NOTES

Section 49A, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

In section 49A,

first, the words in square brackets in subsection (1) and, second, subsection (1A) were inserted and, third, subsections (3) to (11) were

repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1, respectively paragraph (5), paragraph (6) and paragraph (7), with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance;[6]

the words "Policy & Resources Committee" in square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The following Regulations have been made under section 49A:

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2008;

Criminal Justice (Proceeds of Crime) (Restriction on Cash Transactions) (Bailiwick of Guernsey) Regulations, 2008;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2009;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2009;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2010;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2010;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) (No. 3) Regulations, 2010;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2013;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2013;

Criminal Justice (Proceeds of Crime) (Legal Professionals,

Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2014;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedule 2) Regulations, 2016;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Regulations, 2023;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2023.

[*Specified businesses, and registration*

Specified businesses, etc.

49AA. (1) Schedule 3 (Specified businesses) has effect.

(2) Schedule 4 (Registration of financial services businesses) has effect.

(3) Schedule 5 (Registration of prescribed businesses) has effect.

[(3A) Schedule 6 (Administrator of estate agents) has effect.]

[(3B) Schedule 7 (Administrator of accountants) has effect.]

[(3C) Schedules 8 (Administrator of non-locally qualified legal professionals) and 9 (Functions of His Majesty's Greffier regarding Advocates) have effect.]

[(3D) Schedule 13 (Access to Beneficial Ownership Information by Bailiwick Obliged Entities) has effect.]

(4) The Committee may by regulation amend Schedules 3, 4 and 5 to make further or different provision in respect of the duties and requirements to be complied with by financial services and prescribed businesses for the purposes of

forestalling and preventing money laundering, and for related purposes.

[(4A) For the avoidance of doubt, and without prejudice to the generality of subsection (4), the purposes of forestalling and preventing –

(a) terrorist financing,

(b) the financing of the proliferation of weapons of mass destruction, and

(c) any other activity which would comprise a breach of an international sanctions measure that has been implemented in the Bailiwick,

are included within the meaning of **"related purposes"** in that subsection.]

(5) A disclosure made to a police officer or to any other person or body under the provisions of Schedules 3, 4 and 5 –

(a) shall not be treated as a breach of any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and

(b) does not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(6) The Commission may make rules, instructions and guidance for the purposes of Schedules 3, 4 and 5.

(7) Any court shall take the rules, instructions and guidance into

account in determining whether or not any person has complied with those schedules.

(8) Section 54 (general provisions as to subordinate legislation) has effect in relation to rules, instructions and guidance made by the Commission as if references in that section to an Ordinance and to the States were references respectively to rules, instructions and guidance and to the Commission.]

NOTES

Section 49AA was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1(8), with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

In section 49AA,

subsection (3A) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2022, section 1(2), with effect from 3rd January, 2023;

subsection (3B) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(2), with effect from 25th August, 2023;

subsection (3C) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2023, section 1(2), with effect from 20th October, 2023;

subsection (3D) was inserted by the Criminal Justice (Proceeds of Crime) (Access to Beneficial Ownership Information) (Amendment) Ordinance, 2025, section 1(2), with effect from 30th April, 2025, subject to the provisions of section 3(2) of the 2025 Ordinance;

subsection (4A) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 5) Ordinance, 2023, section 1(2), with effect from 15th December, 2023.

The following Regulations have been made under section 49AA:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2019;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Regulations, 2023;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations, 2023;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2024;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) Regulations, 2024;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 2) Regulations, 2024;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 3) Regulations, 2024;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 4) Regulations, 2024.

The following Handbooks containing the rules and guidance referred to in subsection (7) of this section have been issued by the Guernsey Financial Services Commission:

Handbook on Countering Financial Crime and Terrorist Financing, 2019 (March) (G.S.I. No. 75 of 2019);
Handbook on Countering Financial Crime and Terrorist Financing, 2019 (June) (G.S.I. No. 76 of 2019);
Handbook on Countering Financial Crime and Terrorist Financing (Amendment) Rules, 2019 (G.S.I. No. 112 of 2019);
Handbook on Countering Financial Crime and Terrorist Financing (Amendment) Rules, 2020 (G.S.I. No. 53 of 2020);
Handbook on Countering Financial Crime and Terrorist Financing (Amendment No. 2) Rules, 2020 (G.S.I. No. 60 of 2020);
Handbook on Countering Financial Crime and Terrorist Financing (Amendment No. 1) Rules, 2021 (G.S.I. No. 15 of 2021);
Handbook on Countering Financial Crime and Terrorist Financing (Amendment No. 2) Rules, 2021 (G.S.I. No. 70 of 2021);
Handbook on Countering Financial Crime and Terrorist Financing (G.S.I. No. 146 of 2023);
Handbook on Countering Financial Crime (AML/CFT/CPF) (G.S.I. No. 43 of 2024).

[*Unregulated officers*

Unregulated officers.

49AB. (1) Schedule 10 (Unregulated officers) has effect.

(2) Subsections (4) and (5) of section 49AA have effect in relation to Schedule 10 and unregulated officers as if references in those subsections to Schedules 3, 4 and 5 and financial services businesses were references respectively to

Schedule 10 and unregulated officers.

(3) The Committee may issue guidance for the purposes of Schedule 10.

(4) Subsections (7) and (8) of section 49AA have effect in relation to guidance issued under subsection (3) as if references in those subsections to rules, instructions or guidance made by the Commission were references to guidance issued by the Committee.]

NOTES

Section 49AB and the cross-heading thereto were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023, section 1(2), with effect from 16th October, 2023.

The following Regulations have been made under section 49AB:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2024;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 3) Regulations, 2024.

[*Enforcement of money laundering regulations*

Site visits, etc, for Commission's officers, servants or agents.

49B. (1) In order to determine whether a financial services business has complied with any [Schedules 3, 4 and 5 and any rules, instructions and guidance of the Commission under those Schedules], the Commission's officers, servants or agents may on request enter any premises in the Bailiwick owned, leased or otherwise controlled or occupied by the business.

(2) If the Commission's officers, servants or agents exercise their right of entry under subsection (1), they may require the officers, servants or agents of

the financial services business –

(a) to produce for examination (whether at the premises of the business or at the offices of the Commission) any documents held by the business,

(b) to produce copies of any documents in a legible form for the officers, servants or agents of the Commission to take away,

(c) to answer questions for the purpose of verifying compliance with any [Schedules 3, 4 and 5 and any rules, instructions and guidance of the Commission under those Schedules].

(3) Except in cases of urgency the right of entry conferred by subsection (1) may only be exercised between 9.00 a.m. and 4.00 p.m. on any day except any Saturday, Sunday, Christmas Day, Easter Day or public holiday.

(4) Nothing in this section compels the production or divulgence of an item subject to legal professional privilege or excluded material, but an advocate or other legal adviser may be required to give the name and address of a client.

[(5) A statement made by a person in response to a requirement under this section –

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal

proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under subsection (7) or (8),

(B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

(6) A requirement under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(7) A person who without reasonable excuse obstructs, or fails to comply with a request or requirement of, a person exercising or purporting to exercise any power conferred by this section is guilty of an offence and liable –

(a) on summary conviction, to imprisonment for a term not

exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(8) A person who in purported compliance with a requirement under this section –

(a) makes a statement which he knows to be false or misleading in a material particular,

(b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence and liable –

(i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(ii) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.]

NOTES

Section 49B, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

In section 49B,

the words in square brackets in subsection (1) and in paragraph (c) of subsection (2) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1(9), with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance;[7]

subsection (5) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

In accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Beneficial Ownership) Regulations, 2017, regulation 2(1), with effect from 15th August, 2017, the provisions of this section shall extend (a) to regulated persons within the meaning of the Beneficial Ownership Laws, and (b) to compliance with the provisions of the Beneficial Ownership Laws; and, in accordance with regulation 2(2) of those Regulations, with effect from that same date, the power of entry of the Commission's officers, servants and agents in subsection (1) of this section may be exercised in order to determine whether a regulated person within the meaning of the Beneficial Ownership Laws has complied with the provisions of the Beneficial Ownership Laws, in which case the power shall be exercisable only in respect of any premises in the Bailiwick owned, leased or otherwise controlled or occupied by that person; and this section, as it applies as extended by virtue of this Regulation, shall be construed accordingly.

[**Power of Bailiff to grant warrant.**

49C. (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting –

(a) that a request or requirement under section 49B has not been complied with,

(b) that any information or document furnished pursuant to such a request or requirement is false, misleading, inaccurate or incomplete,

(c) that if such a request or requirement were made –

(i) it would not be complied with,

(ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or

(iii) the making of the request or requirement or any attempt to enforce it might significantly prejudice any inquiry to which the request or requirement would relate,

he may grant a warrant.

(2) A warrant under this section authorises any police officer, together with any other person named or described in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

(a) to enter any premises specified in the warrant using such force as may be reasonably necessary,

(b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of establishing whether the business has complied with any [Schedules 3, 4 and 5 and any rules, instructions and guidance of the Commission under those Schedules], to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant –

(i) to answer any questions relevant to establishing whether the business has complied with any [Schedules 3, 4 and 5 and any rules, instructions and guidance of the Commission under those Schedules],

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(3) A warrant under this section ceases to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents of which possession is taken under the powers conferred by a warrant under this section may be retained –

(a) for a period of 4 months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or

(b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(5) Nothing in a warrant under this section compels the production or divulgence of an item subject to legal professional privilege or excluded material,

but an advocate or other legal adviser may be required to give the name and address of a client.

[(6) A statement made by a person in response to a requirement imposed by or under a warrant under this section –

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under subsection (8) or (9),

(B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

(7) A requirement imposed by or under a warrant under this

section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(8) A person who without reasonable excuse obstructs or fails to comply with a requirement of a person exercising or purporting to exercise any power conferred by a warrant under this section is guilty of an offence and liable –

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(9) A person who in purported compliance with a requirement imposed by or under a warrant under this section –

(a) makes a statement which he knows to be false or misleading in a material particular,

(b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence and liable –

(i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(ii) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.]

NOTES

Section 49C was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

In section 49C,

the words in the first and second pairs of square brackets in subsection (2) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1(9), with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance;[8]

subsection (6) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

In accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Beneficial Ownership) Regulations, 2017, regulation 2(1), with effect from 15th August, 2017, the provisions of this section shall extend (a) to regulated persons within the meaning of the Beneficial Ownership Laws, and (b) to compliance with the provisions of the Beneficial Ownership Laws; and, in accordance with regulation 2(2) of those Regulations, with effect from that same date, the power of entry of the Commission's officers, servants and agents in subsection (1) of section 49B may be exercised in order to determine whether a regulated person within the meaning of the Beneficial Ownership Laws has complied with the provisions of the Beneficial Ownership Laws, in which case the power shall be exercisable only in respect of any premises in the Bailiwick owned, leased or otherwise controlled or occupied by that person; and this section, as it applies as extended by virtue of this Regulation, shall be construed accordingly.

[**Power to extend sections 49B and 49C to relevant businesses.**

49D. (1) The [Policy & Resources Committee] may by regulation direct that the provisions of this Law specified in subsection (2) shall extend, subject to such

exceptions, adaptations and modifications as may be specified in the regulations, to relevant businesses.

(2) The specified provisions are sections 49B and 49C and any other provision of this Law so far as necessary for the purpose of giving effect to those sections as extended under subsection (1).]

NOTES

Section 49D was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

In section 49D, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

[**Compliance with beneficial ownership obligations.**

49DA. (1) The Committee may by regulation prescribe supervisory authorities in respect of the duties and requirements to be complied with under the Beneficial Ownership Laws, and other enactments relating to the beneficial ownership of legal persons, by regulated persons within the meaning of the Beneficial Ownership Laws.

(2) The Committee may by regulation direct that the provisions of this Law specified in subsection (3) shall extend, subject to such exceptions, adaptations and modifications as may be specified in the regulations –

(a) to regulated persons within the meaning of the Beneficial Ownership Laws, and

(b) to compliance with the provisions of the Beneficial Ownership Laws.

(3) The specified provisions are sections 49B and 49C and any other provision of this Law so far as necessary for the purpose of giving effect to those sections as extended under subsection (2).]

NOTES

Section 49DA was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017, section 1, with effect from 15th August, 2017.

The following Regulations have been made under section 49DA:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Beneficial Ownership) Regulations, 2017.

[*Corporate offences*

Offences by bodies corporate and partnerships, etc.

49E. (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is committed by a body corporate and 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.

(2) Where the affairs of a body corporate are managed by its

members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where any such offence 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, any partner,

(b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof 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),

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

(4) Where any such offence is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of any such offence shall be paid from the funds of the body.]

NOTE

Section 49E, and the heading thereto, were inserted by the Criminal Justice

(Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

[*Management of seized etc. property*

Management of seized etc. property.

49EA. (1) The States may by Ordinance prescribe the principles, policies and procedures applicable to[, and may confer on any person any powers in relation to,] the management of property falling within subsection (2).

(2) Property falls within this subsection if it is seized, restrained, frozen, confiscated, forfeited or otherwise detained or removed under and in accordance with the provisions of this Law or –

(a) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

(b) the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001,

(c) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

(d) the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006,

(e) the [Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023],

(f) the Cash Controls (Bailiwick of Guernsey) Law, 2007, or

(g) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011.

[(2A) Without limiting subsection (1), an Ordinance under it may make provision in respect of –

(a) the appointment of receivers,

(b) the exercise or realisation of any right or interest in relation to the property –

(c) where the affairs of the property holder have been declared in a state of désastre,

(d) where the property holder is a Bailiwick company and an order for the winding up of the company has been made, or a resolution has been passed by the company for its voluntary winding up,

(e) where the property holder has a right of set-off or a secured interest (within the meaning given by section 119(5)) in respect of the property, or

(f) in any other circumstances.

(2B) In subsection (2A) –

(a) **"Bailiwick company"** means –

(i) a company incorporated under the Companies (Guernsey) Law, 2008, or

(ii) a company incorporated under the Companies (Alderney) Law, 1994,

(b) **"property holder"**, in relation to any property falling within subsection (2), means –

(i) any person that holds the property, or

(ii) any person that held the property immediately before it was seized, restrained, frozen, confiscated, forfeited or otherwise detained or (as the case may be) removed, and

(c) **"secured interest"** –

(i) means any mortgage, charge, hypothèque, lien or other security, and

(ii) includes any security interest within the meaning of the Security Interests (Guernsey) Law, 1993.]

(3) The Committee may by regulation amend the list of enactments in subsection (2).]

NOTES

Section 49EA, and the heading thereto, were inserted by the Criminal Justice

(Miscellaneous Amendments) (Bailiwick of Guernsey) Ordinance, 2022, section 5(3), with effect from 21st December, 2022.

In section 49EA, the words in square brackets in, first, subsection (1) and, second, subsection (2)(e) were substituted and, third, subsection (2A) and subsection (2B) were inserted by the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023, section 148, Schedule 5, respectively paragraph 5(2)(a), paragraph 5(2)(b) and paragraph 5(2)(c), with effect from 26th April, 2024.

Interpretation of Law

Meaning of "property" and related expressions.

50. (1) In this Law **"property"** includes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property [and also including, for the avoidance of doubt, virtual assets within the meaning of section 17(4) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022].

(2) This Law applies to property whether it is situated in the Bailiwick or elsewhere.

(3) In this Law **"interest"**, in relation to property, includes right.

(4) In this Law –

(a) references to property held by a person include a reference to property vested in his committee of creditors or in a liquidator, and

(b) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so

vested.

(5) For the purposes of this Law –

(a) property is held by any person if he holds or is beneficially entitled (under a trust, as a member of a body corporate or otherwise) to that property or any interest in it, and

(b) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

NOTE

In section 50, the words in square brackets in subsection (1) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2023, section 2, with effect from 7th July, 2023.

[**References to financial services businesses and relevant businesses.**

50A. References in this Law to a financial services business or relevant business (however expressed) include, except in paragraph 1 of Schedule 2, references to a person carrying on such a business.]

NOTE

Section 50A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 21, with effect from 3rd December, 2007.

General interpretation.

51. (1) In this Law, unless the context requires otherwise –

"Alderney company" means a body corporate the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994[s],

"Alderney land register" means the register established under Part III of the Alderney Land and Property, etc, Law, 1949[t],

[**"Bailiff"** means the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué,]

"Bailiwick" means the Bailiwick of Guernsey,

"Bailiwick company" means –

(a) a body corporate the memorandum and articles of which are registered in the Register of Companies within the meaning of section 117(1) of the Companies (Guernsey) Law, 1994[u], or

(b) an Alderney company,

[**"Beneficial Ownership Laws"** means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 and the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,]

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s Order in Council No. XXXIV of 1994.

t Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; and No. VII of 1994.

u Order in Council No. XXXIII of 1994; No. XIV of 1996.

"charging order" means a realty charging order or a personalty charging order,

"collective investment scheme" means any arrangement such as is identified and described in paragraph 1 of Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987[v],

"Commission" means the Guernsey Financial Services Commission,

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

[**"country"** includes a territory,]

"Court of Appeal" means the Court established by the Court of Appeal (Guernsey) Law, 1961[w],

"defendant" means a person against whom proceedings have been instituted, within the meaning of section 37(2), for an offence, whether or not he has been convicted,

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

(a) in relation to information recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the

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[v] Ordres en Conseil Vol. XXX, p. 281; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Order in Council No. XII of 1995; Ordinance No. X of 1998.

[w] Ordres en Conseil Vol. XVIII, p. 315.

production of a copy of the information in a legible form in which it can be taken away,

(b) without prejudice to paragraph (a), references to the production of documents, however expressed, include (without limitation) references to the production of a copy thereof in the English language,]

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

["[**Committee for Home Affairs**]**"** means the States of Guernsey [Committee for Home Affairs],]

[**"intelligence service"** has the same meaning as in section 67 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003,]

[**"money laundering offence"** means –

(a) an offence under section 38, 39 or 40,

(b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

(c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) an offence committed outside the Bailiwick which would constitute an offence specified in paragraph (a), (b) or (c) if committed within the Bailiwick,]

"police officer" means –

(a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

(b) in relation to Alderney, a member of the said salaried police force, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed [or deemed to be appointed pursuant to the provisions of an Ordinance made under section 46A] of the Government of Alderney Law, 1987[x],

(c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey, and

(d) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972[y][,

[**"relevant partnership"** means –

(a) a limited partnership within the meaning of, and subject to the provisions of, the Limited Partnerships

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x Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, pp. 83 and 306; No. XI of 1993; No. IX of 1995; No. IV of 1996; and No. IV of 1998.

y Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

(Guernsey) Law, 1995 that does not have legal personality, or

(b) a partnership within the meaning of, and subject to the provisions of, the Partnership (Guernsey) Law, 1995,]

[**"relevant trust"** means any express trust that is governed by or is otherwise subject to the law of any part of the Bailiwick,]

[**"supervisory Laws"** has the same meaning as in the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,]

[**"unregulated officer"** means an individual or entity who or which –

(a) is a trustee of a relevant trust or a partner of a relevant partnership (other than a limited partner in the case of a limited partnership) or,

(b) in the case of an individual or entity located in (or otherwise subject to the law of) the Bailiwick, occupies a role in relation to a foreign legal arrangement that is equivalent to a role described in subparagraph (a),

and in that capacity, neither holds, nor is required to hold, a licence or authorisation from the Commission under any of the supervisory Laws,]

[**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law,

1989[ya].]

(2) The provisions of the Interpretation (Guernsey) Law, 1948[z] shall apply to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment, statutory instrument or rule of court is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

NOTES

In section 51,

the definitions of the expressions "Bailiff", "country", "document", "Committee for Home Affairs" (originally "Home Department"), "money laundering offence" and "uniform scale" in subsection (1) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 22, with effect from 3rd December, 2007;

the definition of the expression "Beneficial Ownership Laws" in subsection (1) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017, section 2, with effect from 15th August, 2017;

the words in square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016;[9]

the words in the first and second pairs of square brackets in the definition of the expression "Committee for Home Affairs" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(3), Schedule 3, paragraph 7 and section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016;

the definition of the expression "intelligence service" in subsection

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ya Ordres en Conseil Vol. XXXI, p. 278.

z Ordres en Conseil Vol. XIII, p. 355.

(1) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(5), with effect from 28th July, 2010;

the words in square brackets in paragraph (b) of the definition of the expression "police officer" in subsection (1) were substituted in accordance with the provisions of the Government of Alderney (Amendment) Law, 2000, section 2, with effect from 19th June, 2002;

the definitions of the expressions "relevant partnership" and "relevant trust" in subsection (1) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations, 2023, regulation 1(2), with effect from 8th July, 2023;

the definition of the expression "supervisory Laws" in subsection (1) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023, section 1(3), with effect from 16th October, 2023;

the definition of the expression "unregulated officer" in subsection (1) (which definition was originally inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023, section 1(3), with effect from 16th October, 2023) was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2024, regulation 1(2), with effect from 22nd April, 2024.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.[10]

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

In its application to external confiscation orders, section 51 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 17, with effect from 1st January, 2000.

In accordance with the provisions of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022, section 8, Schedule 2, paragraph 1 and paragraph 2, with effect from 20th October, 2022, unless the contrary intention appears and subject to any regulations made under section 8(3), first, any reference to a police officer in this Law and any subordinate legislation made hereunder includes a reference to the Director of the Economic and Financial Crime Bureau and designated persons and to members of the Financial Intelligence Unit and, second, subject to the provisions of section 8(4), any power in an enactment to disclose information to a police officer or customs officer for a specified purpose includes a power to disclose that information to the Director of the Economic and Financial Crime Bureau and designated persons and to members of the Financial Intelligence Unit for the purpose of carrying out their functions.

In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

The Protection of Investors (Bailiwick of Guernsey) Law, 1987 has since been repealed by the Protection of Investors (Bailiwick of Guernsey) Law, 2020, section 80(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 81 of the 2020 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Index of defined expressions.

52. In this Law, unless the context requires otherwise, each expression listed below is defined by, or otherwise falls to be construed in accordance with, the

provision of this Law indicated in parentheses immediately after the expression –

[**"accessible information"**: see Schedule 13,]

[**"account information"** (section 48H(4)),]

"Alderney company" (section 51(1)),

"Alderney land register" (section 51(1)),

"amount that might be realised" (section 6(1)),

"amount to be recovered" (section 5(1) and (3)),

[**"authorised official"**: see Schedule 13,]

[**"Bailiff"** (section 51(1)),]

"Bailiwick" (section 51(1)),

"Bailiwick company" (section 51(1)),

[**"Bailiwick obliged entity"**: see Schedule 13,]

[**"Beneficial Ownership Laws"** (section 51(1)),]

"benefited from criminal conduct" (section 2(3)),

[**"business"** (sections 49(6) and 49A(6)),]

"charging order" (section 51(1)),

"collective investment scheme" (section 51(1)),

"Commission" (section 51(1)),

"Committee" (section 51(1)),

"concluded", in relation to proceedings for an offence (section 37(3)),

"concluded", in relation to an application under section 13, 14 or 19 (section 37(4)),

"concluded", in relation to an application under section 15 or 16 (section 37(5)),

"confiscation order" (section 2(10)),

[**"country"** (section 51(1)),]

"Court" [(section 52A]),

"Court of Appeal" (section 51(1)),

"criminal conduct" (section 1(1)),

[**"criminal property"** (section 44A(3)),]

[**"customer information"** (section 48B(1)),]

"defendant" (section 51(1)),

"designated country" (section 35(1)(a)),

[**"document"** (section 51(1)),]

"drug trafficking" (section 1(2)),

"drug trafficking offence" (section 1(2)),

[**"eGambling business"**: see Schedule 13,]

[**"eGambling Ordinance"**: see Schedule 13,]

"external confiscation order" (section 35(1)(a)(i)),

"financial services business" [(sections 49(1) and 50A)],

"gift caught by this Law" (section 8(1)),

[**"Guernsey Beneficial Ownership Law"**: see Schedule 13,]

[**"Guernsey Register of Beneficial Ownership"**: see Schedule 13,]

"held", in relation to property (section 50(4)(a) and (5)(a)),

"Her Majesty's Procureur" (section 51(1)),

["[**Committee for Home Affairs**]" (section 51(1)),]

"instituted", in relation to proceedings for an offence (section 37(2)),

[**"intelligence service"** (section 51(1)),]

"interest", in relation to property (section 50(3)),

"making a gift" (section 8(2)),

"money laundering" (section 41(7) [and see also section 48MA(7)]),

[**"money laundering offence"** (section 51(1)),]

"personalty charging order" (section 28),

"police officer" (section 51(1)),

"proceeds of criminal conduct" (section 4(1)(a)),

"property" (section 50(1)),

"realisable property" (section 6(2)),

"realty charging order" (section 27(2)),

[**"relevant business"** (sections 49A(1) and 50A),]

[**"relevant legal person"**: see Schedule 13,]

[**"relevant partnership"** (section 51(1)),]

[**"relevant trust"** (section 51(1)),]

"restraint order" (section 26(1)),

"satisfied", in relation to a confiscation order (section 37(6) and (7)),

"subject to appeal", in relation to an order (section 37(8)),

[**"supervisory Laws"** (section 51(1),]

"transferred", in relation to property (section 50(5)(b)),

[**"uniform scale"** (section 51(1)),]

[**"unregulated officer"** (section 51(1)),]

"value of a gift" (section 7(2)),

"value of proceeds of criminal conduct" (section 4(1)(b)),

"value of property" (section 7(1)).

NOTES

In section 52,

the entries for the expressions "accessible information", "authorised official", "Bailiwick obliged entity", "eGambling business", "eGambling Ordinance", "Guernsey Beneficial Ownership Law", "Guernsey Register of Beneficial Ownership", and "relevant legal person" were inserted by the Criminal Justice (Proceeds of Crime) (Access to Beneficial Ownership Information) (Amendment) Ordinance, 2025, section 1(3), with effect from 30th April, 2025, subject to the provisions of section 3(2) of the 2025 Ordinance;

the entries for the expressions "account information", "Bailiff", "business", "country", "customer information", "document", "Committee for Home Affairs" (originally "Home Department"), "money laundering offence", "relevant business" and "uniform scale" were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 23, with effect from 3rd December, 2007;

the entry for the expression "Beneficial Ownership Laws" was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017, section 3, with effect from 15th August, 2017;

the entry for the expression "criminal property" was inserted by the Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(13), with effect from 24th July, 2023, subject to the transitional provision in section 3 of the 2023 Ordinance;

the word, figures and letter in square brackets in the definition of the expression "Court" were substituted by the Criminal Justice (Miscellaneous Amendments) (Bailiwick of Guernsey) Ordinance, 2022, section 5(4), with effect from 21st December, 2022;

the words "Committee for Home Affairs" in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 7, with effect from 1st May, 2016.

the words, figures, parentheses and letter in square brackets in the entry for the expression "financial services business" were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 24, with effect from 3rd December, 2007;

the entry for the expression "intelligence service" was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(6), with effect from 28th July, 2010;

the words in square brackets in the entry for the expression "money laundering" were inserted by the Criminal Justice (Miscellaneous Amendments - Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023, section 1(3), with effect from 26th April, 2024;

the entries for the expressions "relevant partnership" and "relevant trust" were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations, 2023, regulation 1(3), with effect from 8th July, 2023;

the entries for the expressions "supervisory Laws" and "unregulated officer" were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023, section 1(3) (the second subsection 1(3)), with effect from 16th October, 2023.

In its application to external confiscation orders, section 52 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 18, with effect from 1st January, 2000.

[**Interpretation –powers of the Magistrate's Court and references to the Court.**

52A. (1) Subject to the provisions of this section and section 53, in this Law **"the Court"** and **"the Full Court"** mean the Royal Court sitting as a Full Court.

(2) The Magistrate's Court may make a confiscation order under this Law in any case where the amount that might be realised at the time the confiscation order is to be made against the defendant (within the meaning of section 6) is £25,000 or less, and consequently, as this Law applies to such cases, "the Court" means the Royal Court sitting as a Full Court or the Magistrate's Court.

(3) The Magistrate's Court may make a restraint order under this Law in any case where the realisable property to which the order would apply does not exceed £25,000 in value, and consequently, as this Law applies to such cases, "the Court" means the Royal Court sitting as a Full Court or the Magistrate's Court.

(4) The Magistrate's Court may make a realty charging order under this Law in any case where the money the payment to the Crown of which is to be secured by the order does not exceed £25,000 in value, and consequently, as this Law applies to such cases, "the Court" means the Royal Court sitting as a Full Court or the Magistrate's Court.

(5) The Magistrate's Court may make a personalty charging order in any case where the value of the interest created or assigned (as the case may be) does not exceed £25,000, and consequently, as this Law applies to such cases, **"the Court"** means the Royal Court sitting as a Full Court or the Magistrate's Court.]

NOTE

Section 52A was inserted by the Criminal Justice (Miscellaneous Amendments) (Bailiwick of Guernsey) Ordinance, 2022, section 5(5), with effect from 21st December, 2022.

[*Constitution of Court, and exercise of powers*]

[**Constitution of Royal Court for the purposes of this Law**].

53. (1) Rules of Court may provide that, for the purposes of performing such functions of [the Royal Court], whether sitting as a Full Court or as an Ordinary Court, under the provisions [...] of this Law as may be specified in the rules –

(a) [the Royal Court] shall be properly constituted if its consists of the Bailiff –

(i) sitting unaccompanied by the Jurats, or

(ii) sitting accompanied by such number of the Jurats as may be so specified, and

(b) [the Royal Court] may, where it consists of the Bailiff sitting as mentioned in paragraph (a)(i) or (a)(ii), sit in chambers.

(2) A function performed in pursuance of rules of Court under subsection (1) shall be considered for all purposes to have been performed by [the Royal Court]; and any order or finding made or other thing done pursuant to the rules shall have effect as if made or done by [the Royal Court].

(3) The provisions of this section and of any rules hereunder are without prejudice to any provision of this Law conferring functions upon the Bailiff

or, as the case may be, permitting matters to be heard in chambers.

NOTES

In section 53,

first, the marginal note thereto and, second, the words "the Royal Court" in square brackets, wherever occurring, were substituted by the Criminal Justice (Miscellaneous Amendments) (Bailiwick of Guernsey) Ordinance, 2022, section 5(6), with effect from 21st December, 2022;[11]

the words omitted in the second pair of square brackets in subsection (1) were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 25, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 53 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 19, with effect from 1st January, 2000.

The following Rules have been made by Order of the Royal Court under section 53:

Criminal Justice (Proceeds of Crime) Rules, 2013.

[**Powers of Court and His Majesty's Sheriff, etc.**

53ZA. (1) This section applies to –

(a) the powers conferred on the Court by section 26(1) and (4), 27(1), and 28(1),

(b) the powers conferred on His Majesty's Sheriff and police officers by section 26(6), and

(c) the powers of His Majesty's Sheriff where appointed as, and in the capacity of, a receiver appointed under section 26(4) or 29(2).

(2) Subject to the requirements set out in subsection (3), the powers referred to in subsection (1) –

(a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant,

(b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property,

(c) must be exercised without taking account of any obligation of the defendant or a recipient of a gift caught by this Law if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant, and

(d) may be exercised in respect of a debt owed by the Crown.

(3) The requirements referred to in subsection (2) are that –

(a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a gift caught by this Law to retain or recover the value of any interest held by him,

(b) in the case of realisable property held by a recipient of a gift caught by this Law, the powers must be exercised with a view to realising no more than the value for the time being of the gift, and

(c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the Court so orders under subsection (4).

(4) If on an application by the defendant, or by the recipient of a gift caught by this Law, the Court decides that property cannot be replaced, it may order that it must not be sold.

(5) An order under subsection (4) may be revoked or varied.]

NOTE

First, the cross-heading immediately preceding section 53 was substituted and, second, section 53ZA was inserted by the Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(14), with effect from 24th July, 2023, subject to the transitional provision in section 3 of the 2023 Ordinance.

[**Power to amend Law by Ordinance.**

53A. (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations or rules (and vice versa).]

NOTES

Section 53A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 26, with effect from 3rd December, 2007.

The following Ordinances have been made under section 53A:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2008;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2014;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2019;
Criminal Justice (Miscellaneous Amendments) (Bailiwick of Guernsey) Ordinance, 2022;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2022;
Criminal Justice (Miscellaneous Amendments - Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2023;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2023;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 5) Ordinance, 2023;
Criminal Justice (Proceeds of Crime and Drug Trafficking) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023;
Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024;
Criminal Justice (Proceeds of Crime – Seized Assets Fund) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024;
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2025;
Criminal Justice (Proceeds of Crime (Access to Beneficial

Ownership Information) (Amendment) Ordinance, 2025.

Ordinances, regulations and rules

General provisions as to subordinate legislation.

54. (1) Any Ordinance of the States, regulations of the Committee[, or Commission] [or [Committee for Home Affairs]] or rules of Court under this Law –

(a) may be amended or repealed by a subsequent Ordinance or, as the case may be, by subsequent regulations or rules hereunder,

(b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States or, as the case may be, the Committee[, or Commission] [or [Committee for Home Affairs]] or the Court to be necessary or expedient,

(c) shall, in the case of regulations [...], be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

[(1A) ...]

(2) Any power conferred upon the States, the Committee[, or Commission] [or [Committee for Home Affairs]] or the Court by this Law to make an Ordinance or, as the case may be, regulations or rules of Court may be exercised –

(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,

(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,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

NOTES

In section 54,

the punctuation and word "Commission" in square brackets, wherever occurring, were substituted by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2023, section 2(2), Schedule, paragraph 2(1), with effect from 7th July, 2023;

the word "or" in square brackets, wherever occurring, was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 27, with effect from 3rd December, 2007;

the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3,

paragraph 7, with effect from 1st May, 2016;

subsection (1A) and the words in square brackets in paragraph (c) of subsection (1) (which were originally inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1(10), with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance), were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 5) Ordinance, 2023, section 1(3), respectively paragraph (b) and paragraph (a), with effect from 15th December, 2023.

In its application to external confiscation orders, section 54 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 20, with effect from 1st January, 2000.

[*Functions of Her Majesty's Procureur*

Functions of Her Majesty's Procureur.

54A. (1) Her Majesty's Procureur may, either generally or for the purposes of a particular case or class of cases, arrange for any of his or her functions under this Law, other than this power of delegation, to be exercised in his or her name by a Crown Advocate or other Advocate of the Royal Court; and references in this Law to Her Majesty's Procureur shall be construed accordingly.

(2) A function exercised by a Crown Advocate or other Advocate pursuant to an arrangement under subsection (1) is for all purposes exercised by Her Majesty's Procureur; and every decision taken or other thing done by the Crown Advocate or other Advocate pursuant to the arrangement has the same effect as if taken or done by Her Majesty's Procureur.

(3) An arrangement under subsection (1) for the exercise of a function by a Crown Advocate or other Advocate –

(a) may be varied or terminated at any time by Her Majesty's Procureur, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by Her Majesty's Procureur while the arrangement subsists.

(4) Any requirement imposed by or under this Law (however expressed) to provide or produce material to Her Majesty's Procureur, or to give Her Majesty's Procureur access to any material or premises, includes a requirement to provide or produce the material, or to give access to the material or premises, to any person nominated by Her Majesty's Procureur or otherwise acting for him or her and on his or her behalf.

(5) For the purposes of subsection (4) **"material"** includes documents and information.

(6) References in this Law to a person authorised by Her Majesty's Procureur are references to a person, or a member of a class or description of persons, authorised by him or her either generally or for the purposes of a particular case or class of cases.

(7) This section is without prejudice to any other enactment or rule of law.]

NOTE

Section 54A and the cross-heading thereto were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2019, section 1(2), with effect from 12th December, 2019.

Citation and commencement

Citation and commencement.

55. (1) This Law may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

(2) This Law shall come into operation on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes.

NOTES

The Law was brought into force on 1st January, 2000 by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Commencement) Ordinance, 1999, section 1.

In its application to external confiscation orders, section 55 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 20, with effect from 1st January, 2000.

[SCHEDULE 1 Section 49

FINANCIAL SERVICES BUSINESSES

1. (1) The businesses specified in Part I of this Schedule are **"financial services businesses"** for the purposes of this Law.

(2) However –

(a) businesses specified in paragraphs 2 to 20 of Part I of this Schedule are only financial services businesses for the purposes of this Law when carried on by way of business for or on behalf of a customer, and

(b) businesses are not financial services businesses for the purposes of this Law where they constitute incidental or other activities within the meaning of Part II of this Schedule.

PART I

BUSINESSES

2. Lending (including, without limitation, the provision of consumer credit or mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting) and advancing loans against cheques).

3. Financial leasing.

4. Operating a money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing).

5. Buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps, except where –

(a) in the case of bullion, the business consists only of buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion, where the value of each purchase, sale or deal does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked,

(b) in the case of buying postage stamps, the business consists only of buying postage stamps where the value of each purchase does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, and

(c) in the case of selling postage stamps, the business consists only of selling postage stamps –

(i) where the value of each sale does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, or

(ii) in the course of –

(A) a postal services business carried on under the authority of a licence granted under the Post Office (Bailiwick of Guernsey) Law, 2001, or

(B) a business authorised to sell postage stamps by the holder of a licence under that Law.

6. Facilitating or transmitting money or value through an informal money or value transfer system or network.

7. Issuing, redeeming, managing or administering means of payment; and "**means of payment**" includes, without limitation, credit, charge and debit cards, cheques, travellers' cheques, money orders, bankers' drafts and electronic money.

8. Providing financial guarantees or commitments.

9. Trading (by way of spot, forward, swaps, futures, options, etc.) in –

(a) money market instruments (including, without limitation, cheques, bills and certificates of deposit),

(b) foreign exchange, exchange, interest rate or index instruments, and

(c) commodity futures, transferable securities or other negotiable instruments or financial assets.

10. Participating in securities issues and the provision of financial services related to such issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).

11. Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.

12. Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings, except where the advice is provided in the course of carrying on the business of a lawyer or accountant.

13. Money broking.

14. Money changing.

15. Providing individual or collective portfolio management services or advice.

16. Providing safe custody services.

17. Providing services for the safekeeping or administration of cash or liquid securities on behalf of clients.

18. Carrying on the business of a credit union.

19. Accepting repayable funds other than deposits.

20. Otherwise investing, administering or managing funds or money on behalf of other persons.

21. The acceptance of deposits in the course of carrying on deposit-taking business within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 2020.

22. The carrying on of controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 2020.

23. The carrying on of long term business within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002.

24. The carrying on of business as an insurance intermediary in respect of long term business within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

25. Acting as an insurance manager within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 under the authority of a licence under that Law.

26. The carrying on –

(a) of regulated activities within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 in circumstances where the activities are prohibited except under the authority of and in accordance with the conditions of a fiduciary licence under that Law,

(b) by way of business, of the activities described in [section 3(1)(ab) of that Law].

27. (1) The carrying on of –

(a) credit business within the meaning of section 2(4) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (other than credit business comprising the provision of services ancillary to the

provision of credit within the meaning of section 5 of that Law),

(b) financial firm business within the meaning of Part A of Schedule 1 to that Law, or

(c) platform and intermediation business within the meaning of section 26(4) of that Law.

(2) The provision or carrying on, by way of business, of any of the services or activities in relation to virtual assets specified in section 17(1) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (prohibition of business of unlicensed virtual asset service providers ("VASPs")).

PART II

INCIDENTAL AND OTHER ACTIVITIES

28. (1) Any business falling within paragraphs 2 to 20 of Part I of this Schedule carried out in the course of carrying on the profession of an actuary, where such business is incidental to the provision of actuarial advice or services.

(2) For the purposes of this paragraph business is incidental to the provision of actuarial advice or services if –

(a) separate remuneration is not being given for the business as well as for such advice or services,

(b) such advice or services are not themselves a business falling within paragraphs 2 to 20 of Part I of this Schedule, and

(c) the business being carried out is incidental to the main purpose for which such advice or services are provided.

29. The carrying on of any business falling within Part I of this Schedule [or paragraph 6 of Schedule 2] –

(a) by way of the provision of in-house legal, accountancy or actuarial advice or services to any business falling within Part I of this Schedule [or paragraph 6 of Schedule 2], or

(b) in the course of carrying on the profession (respectively) of a lawyer, accountant or actuary for any client carrying on such a business.

30. Activities constituting the restricted activities of dealing, advising and promotion for the purposes of Schedule 2 to the Protection of Investors (Bailiwick of Guernsey) Law, 2020 provided that –

(a) such activities are carried on by a person who is not incorporated or registered in the Bailiwick,

(b) such activities are carried on by a person who does not maintain a physical presence in the Bailiwick,

(c) such activities are carried on from a country or territory listed in Appendix C to the Handbook,

(d) the conduct of such activities is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the

Financial Action Task Force Recommendations on Money Laundering in respect of such activities, and

(e) the conduct of such activities is supervised for compliance with the requirements referred to in item (d) by a relevant supervisory authority within the meaning of section 59(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020.

31. Any business falling within paragraph 23, 24 or 25 of Part I of this Schedule which is –

(a) carried on by a person who holds a licence under the Insurance Business (Bailiwick of Guernsey) Law, 2002 solely to carry on general business within the meaning of that Law,

(b) carried on by a person who is not incorporated or registered in the Bailiwick,

(c) carried on by a person who does not maintain a physical presence in the Bailiwick,

(d) not managed in or from within the Bailiwick, and

(e) subject to authorisation and supervision by the United Kingdom Financial Conduct Authority.

32. Any business falling within paragraphs 2 to 20 of Part I of this Schedule provided that –

(a) the total turnover of that business, plus that of any other business falling within Part I of this Schedule carried on by the same person, does not exceed £50,000 per annum,

(b) no occasional transaction is carried out in the course of that business, that is to say, any transaction involving more than £10,000 where no business relationship has been proposed or established, including any such transaction carried out in a single operation or two or more operations that appear to be linked,

(c) the turnover of that business does not exceed 5% of the total turnover of the person carrying on the business,

(d) that business is ancillary, and directly related, to the main activity of the person carrying on the business,

(e) in the course of that business, money or value is not transmitted or such transmission is not facilitated by any means,

(f) the main activity of the person carrying on that business is not that of a business falling within Part I of this Schedule,

(g) that business is provided only to customers of the main activity of the person carrying on the business and is not offered to the public, and

(h) that business is not carried on by a person who also carries on a business falling within paragraphs 21 to 27 of Part I of this Schedule[, or paragraph 6 of Schedule 2].]

NOTES

Schedule 1 was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2023, section 3, with effect from 7th July, 2023.[12]

In Schedule 1, first, the words in square brackets in paragraph 26(b) were substituted, second, those in square brackets in paragraph 29 and paragraph 29(b) were inserted and, third, the words in square brackets in paragraph 32(h) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2023, respectively regulation 1(2)(a), regulation 1(2)(b) and regulation 1(2)(c), with effect from 8th July, 2023.

In its application to external confiscation orders, the Schedule (Schedule 1) is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 21, with effect from 1st January, 2000.

[SCHEDULE 2 Section 49A

RELEVANT BUSINESSES

1. The businesses specified in the following paragraphs of this Schedule are relevant businesses for the purposes of this Law.

However, a business is not a relevant business if it is financial services business within the meaning of section 49(1) and Schedule 1.

2. **High value dealing.**

Trading in goods when there is received, in respect of any transaction, a payment or payments in cash of at least £7,500 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked.

3. **Estate agency.**

[Acting, in the course of a business, on behalf of others in the acquisition or disposal of real property or any interest therein] –

(a) for the purpose of or with a view to effecting the introduction to the client of a third person who wishes to acquire or (as the case may be) dispose of such an interest, and

(b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or (as the case may be) the acquisition of that interest.

Estate agency does not include any business specified in paragraph 5.

4. Casinos and organised gambling.

The provision or carrying on by way of business of any service or activity which, under the provisions of –

(a) the Gambling (Guernsey) Law, 1971[za] or any Ordinance made under it,

(b) the Hotel Casino Concession (Guernsey) Law, 2001[zb],

(c) the Gambling (Alderney) Law, 1999[zc] or any Ordinance made under it, or

(d) the Gambling (Sark) Law, 2002[zd],

is prohibited except where provided or carried on under the authority of a licence, concession or other authorisation granted under any of those Laws or any Ordinance made under them.

[**5. Legal and accountancy services.**

The business of lawyer, notary or other independent legal professional, when they prepare for or carry out transactions for a client in relation to the following activities –

(a) the acquisition or disposal of an interest in or in respect of real property […],

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za Ordres en Conseil Vol. XXIII, p. 109; Vol. XXIV, p. 400; No. XXVII of 1997; no. II of 2001.

zb Order in Council No. XI of 2002.

zc Order in Council No. XIV of 1999; No. XXVII of 2001.

zd Order in Council No. VIII of 2002; No. XXIX of 2003.

(b) the management of client money, securities or other assets,

(c) the management of bank, savings or securities accounts,

(d) the organisation of contributions for [the creation, operation or management] of companies, or

(e) [the creation, operation or management] of legal persons or arrangements, and the acquisition or disposal of business entities,

or the business of auditor, external accountant, insolvency practitioner or tax adviser.

For the purposes of this paragraph, an **"independent legal professional"** does not include legal professionals employed by –

(a) public authorities, or

(b) undertakings which do not by way of business provide legal services to third parties,

an **"auditor"** means any person who, by way of business, provides audit services pursuant to any function under an enactment,

"external accountant" means any person who, by way of business, provides accountancy services to third parties and does not include accountants employed by –

(a) public authorities, or

(b) undertakings which do not by way of business provide accountancy services to third parties,

"insolvency practitioner" means any person who, by way of business, provides services which include acceptance of appointment as an administrator, liquidator or receiver under the Companies (Guernsey) Law, 2008, the Limited Partnerships (Guernsey) Law, 1995 or any other similar enactment,

"tax adviser" means any person who, by way of business, provides advice about the tax affairs of other persons,

and, for the avoidance of doubt, in each case, does not include an employed person whose duties relate solely to the provision of audit services or accountancy services or services of a type described in the above definitions of insolvency practitioner or tax adviser, as the case may be, to his employer.]

[**6.** **Directors of not more than six companies.**

The 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, but not including –

(a) the provision of in-house legal, accountancy or actuarial advice or services to any business referred to in paragraphs 2 to 27 of Schedule 1, or

(b) the carrying on of the profession (respectively) of a lawyer, accountant or actuary for any client carrying on such a business.]]

NOTES

Schedule 2 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 28(2), with effect from 3rd December, 2007.

In Schedule 2,

the words in square brackets in paragraph 3 were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008, regulation 2, with effect from 1st December, 2008;

paragraph 5 was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010, regulation 2, with effect from 4th October, 2010, subject to the supplemental and transitional provisions in regulation 4 of the 2010 Regulations;

the words omitted in square brackets in subparagraph (a) of paragraph 5 were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2013, regulation 2, with effect from 28th March, 2013;

the words in square brackets in, first, subparagraph (d) and, second, subparagraph (e) of paragraph 5 were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedule 2) Regulations, 2016, regulation 1, respectively paragraph (a) and paragraph (b), with effect from 1st October, 2016;

paragraph 6 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2023, regulation 1(3), with effect from 8th July, 2023.

[SCHEDULE 3

SPECIFIED BUSINESSES

ARRANGEMENT OF PARAGRAPHS

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2. General duty to understand, and assess and mitigate, risks.
3. Duty to carry out risk assessments.

PART II
CUSTOMER DUE DILIGENCE ETC.

4. Customer due diligence.
5. Enhanced customer due diligence.
6. Customer due diligence for low risk relationships.
7. Timing of identification and verification.
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PART III
ENSURING COMPLIANCE AND RECORD KEEPING

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12. Reporting suspicion.
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PART IIIB

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15H. Application.
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PART IV
DESIGNATION OF SUPERVISORY AUTHORITY

16. Guernsey Financial Services Commission.
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PART V
MISCELLANEOUS

17. Notification etc: financial services businesses.
18. Extension of sections 49B and 49C: prescribed businesses.
19. Offences as to false and misleading information.
20. Offences: general.
21. Interpretation.
22. Meaning of "beneficial owner".]

[SCHEDULE 3

SPECIFIED BUSINESSES

PART I

INTRODUCTORY PROVISIONS AND RISK ASSESSMENT

Application.

1. (1) Subject to [subparagraphs (2) and (3)], this Schedule applies to any business that is a financial services business or a prescribed business; and a business to which this Schedule applies is referred to in this Schedule as a specified business.

(2) [Save in the case of a business of the type described in paragraph 6 of Schedule 2, this Schedule] does not apply to a prescribed business where –

(a) the total turnover of the person carrying on the prescribed business in respect of the prescribed business does not exceed £50,000 per annum,

(b) the prescribed business –

(i) if it is an estate agent, does not hold deposits, or

(ii) if it is a prescribed business other than an estate agent, does not carry out occasional transactions,

(c) the services of the prescribed business are provided only to customers or clients resident in the Bailiwick, and

(d) the funds received by the prescribed business are drawn on a bank operating from or within the Bailiwick.

[(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.]

General duty to understand, and assess and mitigate, risks.

2. A specified business must –

(a) understand its money laundering and terrorist financing risks, and

(b) have in place effective policies, procedures and controls to –

(i) identify,

(ii) assess,

(iii) mitigate,

(iv) manage, and

(v) review and monitor,

those risks in a way that is consistent with the requirements of this Schedule, the relevant enactments, the requirements of the Handbook, and the NRA; and this Schedule shall be construed consistently with this duty.

Duty to carry out risk assessments.

3. (1) Without prejudice to the generality of the duty under paragraph 2, a specified business must –

(a) carry out and document a suitable and sufficient money laundering business risk assessment, and a suitable and sufficient terrorist financing business risk assessment, which are specific to the specified business, and

(b) regularly review its business risk assessments, at a minimum annually and more frequently when changes to the business of the specified business occur, so as to keep them up to date and, where, as a result of that review, changes to the business risk assessments are required, it must make those changes.

(2) In carrying out its business risk assessments under subparagraph (1) the business must consider all relevant risk factors before determining –

(a) the level of overall risk to the business,

(b) the type and extent of the risks that the business is willing to accept in order to achieve its strategic objectives (its **"risk appetite"**), and

(c) the appropriate level and type of mitigation to be applied.

(3) The business risk assessments must be appropriate to the nature, size and complexity of the business, and be in respect of –

(a) customers, and the beneficial owners of customers,

(b) countries and geographic areas, and

(c) products, services, transactions and delivery channels (as appropriate), and in particular in respect of the money laundering or terrorist financing risks that may arise in relation to –

(i) the development of new products and new business practices, before such products are made available and such practices adopted, and

(ii) the use of new or developing technologies for both new and pre-existing products, before such technologies are used and adopted[,]

[and the business risk assessments must include (without limitation) consideration of the implications for, and risks to, the business of the offences specified in the NRA as being the most likely predicate offences of the Bailiwick being used for money laundering or terrorist financing.]

(4) A specified business must –

(a) prior to the establishment of a business relationship or the carrying out of an occasional transaction, undertake a risk assessment of that proposed business relationship or occasional transaction, and

(b) regularly review any risk assessment carried out under subparagraph (a) so as to keep it up to date and, where

changes to that risk assessment are required, it must make those changes.

(5) When undertaking a risk assessment under subparagraph (4)(a) or reviewing a risk assessment under subparagraph (4)(b), a specified business must –

(a) take into account its risk appetite and risk factors relating to the type or types of customer (and the beneficial owners of the customer), country or geographic area, and product, service, transaction and delivery channel that are relevant to the business relationship or occasional transaction in question, and

(b) understand that such risk factors, and any other risk factors, either singly or in combination, may increase or decrease the potential risk posed by the business relationship or occasional transaction.

(6) A specified business must –

(a) have in place policies, procedures and controls approved by its board that are appropriate and effective, having regard to the assessed risk, to enable it to mitigate and manage –

(i) risks identified in the business risk assessments and in risk assessments undertaken under subparagraph 4(a), and

(ii) risks relevant, or potentially relevant, to the business identified in the NRA (which risks

must be incorporated into the business risk assessments),

(b) regularly review and monitor the implementation of those policies, controls and procedures, and enhance them if such enhancement is necessary or desirable for the mitigation and management of those risks, and

(c) take additional measures to manage and mitigate higher risks identified in the business risk assessments and in risk assessments undertaken under subparagraph 4(a).

(7) A specified business 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 determining, for the purposes of this Schedule, what constitutes a high or low risk, what its risk appetite is, and what constitute appropriate measures to manage and mitigate risks.

(8) A specified business must comply with subparagraphs (1)(a) and (6)(a) –

(a) as soon as reasonably practicable after 31st March 2019, or

(b) in the case of a specified business which only becomes such on or after 31st March 2019, as soon as reasonably practicable after it becomes such a business,

and subparagraphs (a) and (b) shall be construed consistently with the provisions of the Handbook.

(9) Without prejudice to subparagraph (8), until a specified business has complied with subparagraph (6)(a) it must continue to maintain the policies, procedures and controls it was required to establish and maintain under the FSB Regulations and the PB Regulations.

PART II

CUSTOMER DUE DILIGENCE ETC.

Customer due diligence.

4. (1) A specified business shall, subject to the following provisions of this Schedule, ensure that the steps in subparagraph (3) are carried out –

(a) when carrying out the activities in subparagraphs (2)(a) and (b) and in the circumstances in subparagraphs (2)(c) and (d), and

(b) in relation to a business relationship established prior to the coming into force of this Schedule –

(i) in respect of which there is maintained an anonymous account or an account in a fictitious name, as soon as possible after the coming into force of this Schedule and in any event before such account is used again in any way, and

(ii) where it does not fall within subparagraph (i) and to the extent that such steps have not already been carried out, at appropriate times on a risk-sensitive basis.

(2) The activities and circumstances referred to in subparagraph (1) are –

(a) establishing a business relationship,

(b) carrying out an occasional transaction,

(c) where the specified business knows or suspects or has reasonable grounds for knowing or suspecting –

(i) that, notwithstanding any exemptions or thresholds pursuant to this Schedule, any party to a business relationship is engaged in money laundering or terrorist financing, or

(ii) that it is carrying out a transaction on behalf of a person, including a beneficial owner, who is engaged in money laundering or terrorist financing, and

(d) where the specified business has doubts about the veracity or adequacy of previously obtained identification data.

(3) The steps referred to in subparagraph (1) are that –

(a) the customer shall be identified and the identity of the customer verified using identification data,

(b) any person purporting to act on behalf of the customer shall be identified and that person's identity and authority to so act shall be verified,

(c) the beneficial owner shall be identified and reasonable measures shall be taken to verify such identity using identification data and such measures shall include, in the case of a customer which is a legal person or legal arrangement, [measures to understand the nature of the customer's business and its ownership and control structure,]

(d) a determination shall be made as to whether the customer is acting on behalf of another person and, if the customer is so acting, reasonable measures shall be taken to identify that other person and to obtain sufficient identification data to verify the identity of that other person,

(e) the purpose and intended nature of each business relationship and occasional transaction shall be understood, and information shall be obtained as appropriate to support this understanding, and

(f) a determination shall be made as to whether the customer or beneficial owner is a politically exposed person, and, if so, whether he or she is a foreign

politically exposed person, a domestic politically exposed person or a person who is or has been entrusted with a prominent function by an international organisation.

(4) A specified business is not required to identify any shareholder or beneficial owner in relation to –

(a) a customer, and

(b) a person which ultimately controls a customer,

that is a company listed on a recognised stock exchange within the meaning of the Beneficial Ownership (Definition) Regulations, 2017[ze], or a majority owned subsidiary of such a company.

(5) Where a specified business –

(a) forms a suspicion of money laundering or terrorist financing by a customer or other person, and

(b) reasonably believes that carrying out the steps in subparagraph (3), paragraph 5(3) or paragraph 11 would tip off that customer or person,

it shall not carry out those steps, but shall instead make a disclosure pursuant to Part I of the Disclosure Law, or section 15 or 15A, or section 12 (as appropriate) of the Terrorism Law.

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ze G.S.I. No. 38 of 2017; as amended by G.S.I. No. 51 of 2017; G.S.I. No. 99 of 2017; and G.S.I. No. 121 of 2017.

(6) For the avoidance of doubt, a specified business must not treat a business relationship or occasional transaction as low risk for all money laundering and terrorist financing purposes solely because the business relationship or occasional transaction was assessed to be low risk.

[(7) A specified business must have regard to any relevant rules and guidance in the Handbook in determining, for the purposes of subparagraph (3)(c) and paragraphs 5(3)(a)(iii) and 5(3)(a)(v)(D), what constitutes reasonable measures.]

Enhanced customer due diligence.

5. (1) Where a specified business is required to carry out customer due diligence, it must also carry out enhanced customer due diligence in relation to high risk business relationships and occasional transactions, including, without limitation –

(a) a business relationship or occasional transaction in which the customer or any beneficial owner is a foreign politically exposed person,

(b) where the specified business is a financial services business, a business relationship which is –

(i) a correspondent banking relationship, or

(ii) similar to such a relationship in that it involves the provision of services, which themselves amount to financial services business or facilitate the carrying on of such business, by one financial services business to another,

(c) a business relationship or an occasional transaction –

(i) where the customer or beneficial owner has a relevant connection with a country or territory that –

A. provides funding or support for terrorist activities, or does not apply (or insufficiently applies) the Financial Action Task Force Recommendations, or

B. is a country otherwise identified by the Financial Action Task Force as a country for which such measures are appropriate,

(ii) which the specified business considers to be a high risk relationship, taking into account any notices, instructions or warnings issued from time to time by the Commission and having regard to the NRA,

(d) a business relationship or an occasional transaction which has been assessed as a high risk relationship, and

(e) a business relationship or an occasional transaction in which the customer, the beneficial owner of the customer, or any other legal person in the ownership or control structure of the customer, is a legal person that has bearer shares or bearer warrants.

(2) A specified business must also carry out enhanced measures in relation to business relationships and occasional transactions, whether otherwise high risk or not, which involve or are in relation to –

(a) a customer who is not resident in the Bailiwick,

(b) the provision of private banking services,

(c) a customer which is a legal person or legal arrangement used for personal asset holding purposes, or

(d) a customer which is –

(i) a legal person with nominee shareholders, or

(ii) owned by a legal person with nominee shareholders.

(3) In subparagraphs (1) and (2) –

(a) **"enhanced customer due diligence"** means –

(i) obtaining senior management approval for establishing a business relationship or undertaking an occasional transaction,

[(ii) obtaining senior management approval for, in the case of either –

A. an existing business relationship with a foreign politically exposed person, or

B. an existing high risk business relationship with a domestic politically exposed person or a person who is a politically exposed person by virtue of subparagraph (4)(b),

continuing that relationship,]

(ii) obtaining senior management approval for, in the case of an existing business relationship with a foreign politically exposed person, continuing that relationship,

(iii) taking reasonable measures to establish and understand the source of any funds and of the wealth of –

(A) the customer, and

(B) the beneficial owner, where the beneficial owner is a politically exposed person,

(iv) carrying out more frequent and more extensive ongoing monitoring, including increasing the number and timing of controls applied and selecting patterns of activity or transactions that need further examination, in accordance with paragraph 11, and

(v) taking one or more of the following steps as would be appropriate to the particular business relationship or occasional transaction –

(A) obtaining additional information about the customer, such as the type, volume and value of the customer's assets and additional information about the customer's beneficial owners,

(B) verifying additional aspects of the customer's identity,

(C) obtaining additional information to understand the purpose and intended nature of each business relationship and occasional transaction, and

(D) taking reasonable measures to establish and understand the source of wealth of beneficial owners not falling within subparagraph (iii), and

(b) **"enhanced measures"** means the carrying out of appropriate and adequate enhanced measures in relation to a business relationship or occasional transaction, to mitigate and manage the specific higher risk of money laundering and terrorist financing resulting from the matters listed in subparagraph (2) that are relevant to that relationship or transaction.

(4) [Subject to subparagraphs (5) and (5A)], in this Schedule **"politically exposed person"** means –

(a) a natural person who has, or has had at any time, a prominent public function, or who has been elected or appointed to such a function, including, without limitation –

(i) heads of state or heads of government,

(ii) senior politicians and other important officials of political parties,

(iii) senior government officials,

(iv) senior members of the judiciary,

(v) senior military officers, and

(vi) senior executives of state owned body corporates,

(and such a person shall be referred to as a **"foreign politically exposed person"** unless he or she holds or has held or has been elected or appointed to the prominent public function in question in respect of the Bailiwick, in which case he or she shall be referred to as a **"domestic politically exposed person"**),

(b) a person who is, or who has been at any time, entrusted with a prominent function by an international organisation,

(c) an immediate family member of a person referred to in (a) or (b) including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and in this subparagraph **"partner"** means a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse, or

(d) a [close associate of a person referred to in (a) or (b)], including, without limitation –

(i) a person who is widely known to maintain a close business relationship with such a person, or

(ii) a person who is in a position to conduct substantial financial transactions on behalf of such a person.

(5) A specified business may treat a domestic politically exposed person as not being a politically exposed person five years after the person ceased to be entrusted with a public function if the senior management of the business has documented that the business is satisfied that –

(a) it understands the source of the funds within the business relationship or occasional transaction, and

(b) there is no reason to continue to treat the person as a politically exposed person.

[(5A) A person is not a politically exposed person for the purposes of this Schedule if that person –

(a) was not a politically exposed person within the meaning of regulation 5(2)(b) of the FSB Regulations or regulation 5(2)(b) of the PB Regulations, when those Regulations were in force, and

(b) ceased to be entrusted with a prominent public function in respect of the Bailiwick before 31st March 2019.]

(6) Subject to subparagraph (9), a specified business may treat a person falling within subparagraph (4)(b) as not being a politically exposed person seven years after the person ceased to be entrusted with a prominent function by an international organisation if the senior management of the business has documented that the business is satisfied that –

(a) it understands the source of the funds within the business relationship or occasional transaction, and

(b) there is no reason to continue to treat the person as a politically exposed person.

(7) Subject to subparagraph (9), a specified business may treat any other politically exposed person as not being a politically exposed person for the purposes of this Schedule seven years after the person ceased to be entrusted with a public function if the senior management of the business has documented that the

business is satisfied that –

(a) it has established and understands the source of the person's wealth, and that of the funds within the business relationship or occasional transaction, and

(b) there is no reason to continue to treat the person as a politically exposed person.

(8) Subparagraphs (5) to (7) apply in respect of persons falling within subparagraphs (4)(c) and (d) (immediate family members and close associates) in respect of the person in question as they do in respect of that person.

(9) Subparagraphs (6) and (7) do not apply in respect of a head of state or a head of government, a head of an international organisation, a person with the power to direct the spending of significant sums, or persons falling within subparagraphs (4)(c) and (d) in respect of such persons.

(10) For the purposes of subparagraph 1(c), a customer or beneficial owner has a **"relevant connection"** with a country or territory if the customer or beneficial owner –

(a) is the government, or a public authority, of the country or territory,

(b) is a politically exposed person within the meaning of subparagraph (4) in respect of the country or territory,

(c) is resident in the country or territory,

(d) has a business address in the country or territory,

(e) derives funds from –

(i) assets held by the customer or beneficial owner, or on behalf of the customer or beneficial owner, in the country or territory, or

(ii) income arising in the country or territory, or

(f) has any other connection with the country or territory which the specified business considers, in light of that business' duties under this Schedule (including but not limited to its duties under paragraph 2), to be a relevant connection for those purposes.

(11) A specified business must have regard to any relevant rules and guidance in the Handbook in determining –

(a) for the purposes of subparagraph (1), what constitute high risk business relationships and occasional transactions, and

(b) for the purposes of subparagraphs (5) to (7), if there is a reason to continue to treat the person mentioned there as a politically exposed person.

Customer due diligence for low risk relationships.

6. [(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.]

(2) The discretion in subparagraph (1) may only be exercised –

(a) in accordance with the requirements set out in the Handbook, and

[(b) where paragraph 3 applies to a specified business, by a specified business that complies with the requirements of that paragraph.]

(3) For the avoidance of doubt, the discretion in subparagraph (1) shall not be exercised –

(a) where the specified business forms a suspicion that any party to a business relationship or occasional transaction or any beneficial owner is or has been engaged in money laundering or terrorist financing, or

(b) in relation to business relationships or occasional transactions where the risk is other than low.

Timing of identification and verification.

7. (1) Identification and verification of the identity of any person or legal arrangement pursuant to paragraphs 4 to 6 must, subject to subparagraph (2) and paragraph 4(1)(b), be carried out before or during the course of establishing a business relationship or before carrying out an occasional transaction.

(2) Verification of the identity of the customer and any of the beneficial owners may be completed following the establishment of a business relationship provided that to do so would be consistent with the risk assessment of the business relationship conducted pursuant to paragraph 3(4)(a), and –

(a) the verification is completed as soon as reasonably practicable thereafter,

(b) the need to do so is essential not to interrupt the normal conduct of business, and

(c) appropriate and effective policies, procedures and controls are in place which operate so as to manage risk, including, without limitation, a set of measures, such as a limitation of the number, types and/or amount of transactions that can be performed or the monitoring of large or complex transactions [being carried out outside] the expected norms for that business relationship.

[(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.".]

Accounts and shell banks.

8. (1) A specified business must, in relation to all customers –

(a) not set up or keep anonymous accounts or accounts in fictitious names, and

(b) maintain accounts in a manner which facilitates the meeting of the requirements of this Schedule, and the relevant rules and guidance in the Handbook.

(2) A specified business must –

(a) not enter into, or continue, a correspondent banking relationship with a shell bank, and

(b) take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship where the respondent bank is known to permit its accounts to be used by a shell bank.

(3) In this paragraph –

(a) **"consolidated supervision"** means supervision by a regulatory authority of all aspects of the business of a group of bodies corporate carried on worldwide, to ensure compliance with –

(i) the Financial Action Task Force Recommendations, and

(ii) other international requirements,

and in accordance with the Core Principles of Effective Banking Supervision issued by the Basel Committee on Banking Supervision as revised or reissued from time to time,

(b) **"physical presence"** means the presence of persons involved in a meaningful way in the running and management of the bank which, for the avoidance of doubt, is not satisfied by the presence of a local agent or junior staff, and

(c) **"shell bank"** means a bank that has no physical presence in the country or territory in which it is incorporated and licensed and which is not a member of a group of bodies corporate which is subject to effective consolidated supervision.

Non-compliance with customer due diligence measures etc.

9. Where a specified business can not comply with any of paragraph [4(3)(a) to (e)] or paragraph 11(1)(a) to (b) it must –

(a) in the case of an existing business relationship, terminate that business relationship,

(b) in the case of a proposed business relationship or occasional transaction, not enter into that business relationship or carry out that occasional transaction with the customer, and

(c) consider whether a disclosure must be made pursuant to Part I of the Disclosure Law, or section 15 or 15A, or section 12 (as appropriate) of the Terrorism Law.

Introduced business.

10. (1) In the circumstances set out in subparagraph (2), a specified business may accept a written confirmation of identity and other matters from an introducer in relation to the requirements of paragraph 4(3)(a) to (e) provided that –

(a) the specified business also requires copies of identification data and any other relevant documentation on the identity of the customer and beneficial owner to be made available by the introducer to the specified business immediately upon request, and

(b) the introducer keeps such identification data and documents.

(2) The circumstances referred to in subparagraph (1) are that the introducer –

(a) is an Appendix C business, or

(b) is either an overseas branch office of, or a member of the same group of legal persons or legal arrangements as, the specified business with which it is entering into the business relationship (**"receiving specified business"**), and –

(i) the ultimate legal person or legal arrangement of the group of legal persons or legal arrangements of which both the introducer and the receiving specified business are members, falls within subparagraph (a), and

(ii) the conduct of the introducer is subject to requirements to forestall, prevent and detect money laundering and terrorist financing (including the application of any appropriate additional measures to effectively handle the risk of money laundering or terrorist financing) that are consistent with those in the Financial Action Task Force Recommendations in respect of such a business (particularly Recommendations 10, 11 and 12), and the introducer has implemented a programme to combat money laundering and terrorist financing that is consistent with the requirements of Recommendation 18, and

(iii) the conduct both of the introducer, and of the group of legal persons or legal arrangements of which both the introducer and the receiving specified business are members, is supervised or

monitored for compliance with the requirements referred to in subparagraph (ii), by the Commission or [a relevant supervisory authority].

(3) Notwithstanding subparagraph (1), where reliance is placed upon the introducer the responsibility for complying with the relevant provisions of paragraph 4 remains with the receiving specified business.

PART III

ENSURING COMPLIANCE AND RECORD KEEPING

Monitoring transactions and other activity.

11. (1) A specified business shall perform ongoing and effective monitoring of any business relationship, which shall include –

(a) reviewing identification data and records to ensure they are kept up to date, accurate and relevant, and updating such data and records when they are not up to date, accurate or relevant,

(b) scrutinising any transactions or other activity to ensure that the transactions are consistent with the [specified] business' knowledge of the customer, their business and risk profile (including, where necessary, the sources of funds) and paying particular attention to all –

(i) complex transactions,

(ii) transactions which are both large and unusual, and

(iii) unusual patterns of activity or transactions,

which have no apparent economic purpose or no apparent lawful purpose, and

(c) ensuring that the way in which identification data is recorded and stored is such as to facilitate the ongoing monitoring of each business relationship.

(2) The extent of any monitoring carried out under this paragraph and the frequency at which it is carried out shall be determined on the basis of materiality and risk including, without limitation, whether or not the business relationship is a high risk relationship.

(3) Without prejudice to the generality of paragraph (2), where within an existing business relationship there are complex and unusually large transactions, or unusual patterns of transactions, which have no apparent economic or lawful purpose, a specified business shall –

(a) examine the background and purpose of those transactions, and

(b) increase the degree and nature of monitoring of the business relationship.

Reporting suspicion.

12. (1) Subject to subsection (2), a specified business shall –

(a) appoint a person of at least [manager level] as the Money Laundering Reporting Officer, provide the

name, title and email address of that person to the Commission as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment, and ensure that all employees are aware of the name of that person,

(b) if it is a financial services business which comprises more than one individual, nominate a person to –

(i) receive disclosures, under Part I of the Disclosure Law and section 15 of the Terrorism Law (a **"nominated officer"**), in the absence of the Money Laundering Reporting Officer, and

(ii) otherwise carry out the functions of the Money Laundering Reporting Officer in that officer's absence,

and ensure that all employees are aware of the name of that nominated officer,

(c) if it is a prescribed business which comprises more than one individual, nominate a person to –

(i) receive disclosures, under Part I of the Disclosure Law and section 12 of the Terrorism Law (a **"nominated officer"**), in the absence of the Money Laundering Reporting Officer, and

(ii) otherwise carry out the functions of the Money Laundering Reporting Officer in that officer's absence,

and ensure that all employees are aware of the name of that nominated officer,

(d) provide the name, title and email address of the Money Laundering Reporting Officer appointed under (a), and of any person nominated under (b) or (c), to the [Financial Intelligence Unit] as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment or nomination (as the case may be),

(e) ensure that where an employee, other than the Money Laundering Reporting Officer, is required to make a disclosure under Part I of the Disclosure Law, or section 15 or section 12 (as appropriate) of the Terrorism Law, that this is done by way of a report to the Money Laundering Reporting Officer, or, in that officer's absence, to a nominated officer,

(f) ensure that the Money Laundering Reporting Officer, or in that officer's absence a nominated officer, in determining whether or not he or she is required to make a disclosure under Part I of the Disclosure Law, or section 15A or section 12 (as appropriate) of the Terrorism Law, takes into account all relevant information,

(g) ensure that the Money Laundering Reporting Officer, or, in his or her absence, a nominated officer, is given prompt access to any other information which may be of assistance to him or her in considering any report, and

(h) ensure that it establishes and maintains such other appropriate and effective procedures and controls 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.

(2) A person who, immediately prior to the coming into force of this Schedule (**"Commencement"**), was a money laundering reporting officer of a financial services business or a prescribed business, having been appointed as such under Part III of the FSB Regulations or Part III of the PB Regulations, as the case may be, shall be deemed to have been appointed as that business' Money Laundering Reporting Officer under subparagraph (1)(a) on Commencement, for the purposes of this Schedule.

(3) A person who, immediately prior to Commencement, was a nominated officer of a financial services business or a prescribed business, having been nominated as such under Part III of the FSB Regulations or Part III of the PB Regulations, as the case may be, shall be deemed to have been nominated as that business' nominated officer under subparagraph (1)(a) on Commencement, for the purposes of this Schedule.

(4) The requirement at subparagraph (1)(a) to provide the name, title and email address of the Money Laundering Reporting Officer to the Commission, and the requirements at subparagraph (1)(d), do not apply in respect of

a person [deemed to have been appointed] or nominated under subparagraph (2) or (3) (as the case may be).

[(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.".]

Employee screening and training.

13. (1) A specified business shall maintain appropriate and effective procedures, proportionate to the nature and size of the business and to its risks, when hiring employees or admitting any person as a partner in the business, for the purpose of ensuring high standards of employee and partner probity and competence.

(2) [Subject to subparagraph (2A),] a specified business shall ensure that relevant employees, and any partners in the business, receive

comprehensive ongoing training (at a frequency which has regard to the money laundering and terrorist financing risks to the business) in –

(a) the relevant enactments, this Schedule and the Handbook,

(b) the personal obligations of employees, and partners, and their potential criminal liability under this Schedule and the relevant enactments,

(c) the implications of non-compliance by employees, and partners, with any rules, guidance, instructions, notices or other similar instruments made for the purposes of this Schedule, and

(d) its policies, procedures and controls for the purposes of forestalling, preventing and detecting money laundering and terrorist financing.

[(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.]

(3) A specified business shall identify relevant employees and partners in the business who, in view of their particular responsibilities, should receive additional and ongoing training, appropriate to their roles, in the matters set out in subparagraph (2) and must provide such additional training.

Record-keeping.

14. (1) Subject to the provisions of this paragraph, a specified business must keep a comprehensive record of each transaction with a customer or an introducer, including the amounts and types of currency involved in the transaction (if any); and such a record shall be referred to as a **"transaction document"**.

(2) A specified business shall keep –

(a) all transaction documents, risk assessments undertaken under paragraph 3(4), and any customer due diligence information, or

(b) copies thereof,

for the minimum retention period.

(3) A specified business must keep copies of business risk assessments carried out under paragraph 3(1) until the expiry of the period of five years starting from the date on which they cease to be operative.

(4) Where a specified business is required by any enactment, rule of law or court order to provide a transaction document or any customer due diligence information to any person before the end of the minimum retention period, the specified business shall –

(a) keep a copy of the transaction document or customer due diligence information until the period has ended or the original is returned, whichever occurs first, and

(b) maintain a register of transaction documents and customer due diligence information so provided.

(5) A specified business shall also keep records of –

(a) any reports made to a reporting officer as referred to in paragraph 12 and of any disclosure made under Part I of the Disclosure Law, or section 15 or 15A, or section 12 (as appropriate), of the Terrorism Law made other than by way of a report to the reporting officer, for five years starting from –

(i) in the case of a report or a disclosure in relation to a business relationship, the date the business relationship ceased,

(ii) in the case of a report or a disclosure in relation to an occasional transaction, the date that transaction was completed, or

(iii) in any other case, the event in respect of which the report or disclosure was made,

(b) any training carried out under paragraph 13 for five years starting from the date the training was carried out,

(c) any minutes or other documents prepared pursuant to paragraph 15(1)(c) until –

(i) the expiry of a period of five years starting from the date they were finalised, or

(ii) they are superseded by later minutes or other documents prepared under that paragraph,

whichever occurs later, and

(d) its policies, procedures and controls which it is required to establish and maintain pursuant to this Schedule, until the expiry of a period of five years starting from the date that they ceased to be operative.

(6) Documents and customer due diligence information, including any copies thereof, kept under this paragraph –

(a) may be kept in any manner or form, provided that they are readily retrievable, and

(b) must be made available promptly –

(i) to an auditor, and

(ii) to any police officer, the [Financial Intelligence Unit], the Commission or any other person, where such documents or customer due diligence information are requested pursuant to this Schedule or any relevant enactment.

[(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.]

Ensuring compliance, corporate responsibility and related requirements.

15. (1) A specified business must, in addition to complying with the preceding requirements of this Schedule –

(a) if it is a specified business which comprises more than one individual, appoint a person of at least [manager level] as the Money Laundering Compliance Officer and provide the name, title and email address of that person to the Commission as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment,

(b) establish such other policies, procedures and controls as may be appropriate and effective (having regard to the risk of money laundering and terrorist financing and the size of the business) for the purposes of forestalling, preventing and detecting money laundering and terrorist financing,

[(ba) without prejudice to the generality of subparagraph (b), establish an independent audit function (where appropriate, having regard to the money laundering and terrorist financing risks, and the size and nature, of the specified business in question), for the purpose of evaluating the adequacy and effectiveness of the policies, procedures and controls adopted by the specified business to comply with the requirements of this Schedule, the relevant enactments and the

Handbook,]

(c) establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of this Schedule and the Handbook, and such policy shall include provision as to the extent and frequency of such reviews,

(d) ensure that a review of its compliance with this Schedule and the Handbook is discussed and minuted at a meeting of the board at appropriate intervals, and in considering what is appropriate a specified business must have regard to the risk taking into account –

(i) the size, nature and complexity of the specified business,

(ii) its customers, products and services, and

(iii) the ways in which it provides those products and services,

(e) subject to subparagraph (2) ensure that any of its branch offices and, where it is a body corporate, any body corporate of which it is the majority shareholder or control of which it otherwise exercises, which, in either case, is a specified business in any country or territory outside the Bailiwick (together, for the purposes of this paragraph, its **"subsidiaries"**), complies there with –

(i) the requirements of this Schedule and the Handbook, and

(ii) any requirements under the law applicable in that country or territory which are consistent with the Financial Action Task Force Recommendations,

provided that, where requirements under subparagraphs (i) and (ii) differ, a specified business must ensure that the requirement which provides the highest standard of compliance, by reference to the Financial Action Task Force Recommendations, is complied with,

(f) subject to subparagraph (2), ensure that it and its subsidiaries effectively implement policies, procedures and controls in respect of the sharing of information (including but not limited to customer, account and transaction information) between themselves for the purposes of –

(i) carrying out customer due diligence,

(ii) sharing suspicions relating to money laundering and terrorist financing that have been formed and reported to the [Financial Intelligence Unit] (unless the [Financial Intelligence Unit] has instructed that they should not be so shared), and

(iii) otherwise forestalling, preventing and detecting money laundering and terrorist financing,

whilst ensuring that such policies, procedures and controls protect the confidentiality of such information, and

(g) where it is a specified business to which Schedule 4 applies, ensure that the conduct of any agent that it uses is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations in respect of such an agent.

(2) The obligations under subparagraphs (1)(e) and (f) apply to the extent that the law of the relevant country or territory allows and if the law of the [country] or territory does not so allow in relation to any requirement of this Schedule, the specified business must notify the Commission accordingly.

[PART IIIA
SPECIFIC PROVISIONS ABOUT VIRTUAL ASSETS

Purpose of this Part.

15A. This Part of this Schedule makes provision in respect of the transfer of virtual assets.

Expressions used in this Part.

15B. In this Part of this Schedule –

"appropriate authorities" means the Commission, His Majesty's Procureur, the salaried police force of the Island of Guernsey, the Guernsey

Border Agency, the Director of the Economic and Financial Crime Bureau, the Financial Intelligence Unit, the Director of the Revenue Service, the Policy and Resources Committee (when acting under any enactment in respect of international sanctions measures) or any other Bailiwick of Guernsey person, authority, body or agency specified for the purposes of this Part of this Schedule in the Handbook,

"batch transfer" means a transfer comprised of a number of individual virtual asset transfers from one or more originators that are being sent to the same VASP, but may or may not be ultimately intended for different persons,

"beneficiary" means the person or legal arrangement who is identified by the originator as the receiver of the requested transfer of the virtual asset,

"beneficiary information" means information, or information of a class or description, specified for the purposes of this Part of this Schedule in requirements set out in the Handbook,

"beneficiary VASP" means the VASP which receives the transfer of the virtual asset from the originating VASP directly or through an intermediary VASP and makes the virtual asset available to the beneficiary,

"intermediary VASP" means a VASP which it is not acting on behalf of the originator or beneficiary but receives or transmits a virtual asset on behalf of the originating VASP, the beneficiary VASP or another intermediary VASP,

"originating VASP" means the VASP which initiates the transfer of the virtual asset and transfers the virtual asset upon receiving the order for a

transfer of the virtual asset from or on behalf of the originator,

"originator" means the customer who allows the transfer of the virtual asset from the customer's account or, where there is no account, the person who places the order with the originating VASP to perform the transfer,

"originator information" means information, or information of a class or description, specified for the purposes of this Part of this Schedule in requirements set out in the Handbook,

"transfer" of a virtual asset means a transaction carried out on behalf of an originator through an originating VASP by electronic means with a view to making a virtual asset available to a beneficiary at a beneficiary VASP, irrespective of whether the originator and the beneficiary are the same person,

"unique transaction identifier" means a combination of letters, numbers or symbols determined by the VASP which permits the traceability of the transaction from the originator to the beneficiary,

"VASPs" and **"virtual assets"** have the meanings respectively given in section 90(1) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022.

Originator and beneficiary information – duties of VASPs.

15C. (1) An originating VASP must, in respect of any virtual asset transfer –

(a) obtain and hold required and accurate originator information and required beneficiary information,

(b) ensure that the information specified in (a) accompanies the transfer of the virtual asset to the beneficiary VASP immediately and securely,

(c) make the information specified in (a) available on request to the Commission and other appropriate authorities as soon as is reasonably practicable,

(d) not execute any virtual asset transfer in respect of which (b) is not complied with, and

(e) in the case of a transaction which would be an occasional transaction but for the sum involved being [under £1,000], obtain and hold such information, or information of such class or description, as may be specified for the purposes of this Part of this Schedule in requirements set out in the Handbook.

(2) A beneficiary VASP must, in respect of any virtual asset transfer –

(a) obtain and hold required and accurate beneficiary information and required originator information,

(b) make the information specified in (a) available on request to the Commission and other appropriate authorities as soon as is reasonably practicable, and

(c) in the case of a transaction which would be an occasional transaction but for the sum involved being [under £1,000], obtain and hold such information, or information of such class or description, as may be

specified for the purposes of this Part of this Schedule in requirements set out in the Handbook.

(3) An intermediary VASP must, in respect of any virtual asset transfer –

(a) take reasonable measures which are consistent with straight-through processing to identify transfers received by it that are not accompanied by the originator and beneficiary information specified in (1)(a),

(b) without prejudice to the obligations to make disclosure imposed on specified businesses by paragraph 4(5), report to the Commission repeated failures by an originating VASP, beneficiary VASP or intermediary VASP to comply with the requirements of this Schedule as to the obtaining, holding, verification, retention, provision and use of information in respect of virtual asset transfers,

(c) ensure that any beneficiary information and originator information accompanying the transfer is retained with it,

(d) subject to (e), ensure that the information specified in (c) accompanies the onward transfer that the intermediary VASP will be making,

(e) where technical limitations prevent the information specified in (c) from accompanying an onward transfer,

keep a comprehensive record of all information received from the originating VASP or another intermediary VASP for a period of not less than five years starting from the date of receipt of the virtual asset by the intermediary VASP, and

(f) have risk-based policies for –

(i) determining when to reject, suspend or otherwise refuse to execute virtual asset transfers because of information deficiencies, and

(ii) the taking of appropriate follow-up action.

Further obligations on beneficiary VASPs.

15D. Beneficiary VASPs must, without prejudice to the provisions of paragraph 15C –

(a) before making a virtual asset available to a beneficiary –

(i) monitor the completeness of the originator information, and

(ii) take remedial action where the information specified in (i) is incomplete,

(b) have risk-based policies for –

(i) determining when to reject, suspend or otherwise refuse to execute virtual asset transfers because of information deficiencies, and

(ii) the taking of appropriate follow-up action, and

(c) without prejudice to the obligations to make disclosure imposed on specified businesses by paragraph 4(5), report to the Commission repeated failures by an originating VASP, beneficiary VASP or intermediary VASP to comply with the requirements of this Schedule as to the obtaining, holding, verification, retention, provision and use of information in respect of virtual asset transfers.

Batch transfers.

15E. In the case of a batch transfer, and without prejudice to the provisions of paragraph 15C, an originating VASP must –

(a) ensure that the batch file contains required and accurate originator information and required beneficiary information,

(b) ensure that the information specified in (a) is such as to permit the traceability within the beneficiary jurisdiction of each transaction comprised in the batch from the originator to the beneficiary, and

(c) include the originator's account number or unique transaction identifier and/or such other information, or

information of such class or description, as may be specified for the purposes of this Part of this Schedule in requirements set out in the Handbook,

and **"beneficiary jurisdiction"** in (b) means the jurisdiction in which the beneficiary VASP receives the transfer of the virtual assets in question.

No cross-border requirement for transfers, etc.

15F. For the avoidance of doubt, the provisions of this Schedule apply in respect of a transfer of virtual assets irrespective of whether the transfer or other service or activity –

(a) is a cross-border transaction, or

(b) is completed within the same jurisdiction (that is, the originating VASP, the beneficiary VASP and any relevant intermediary VASP are located in the Bailiwick).

Application of other provisions of this Schedule.

15G. For the avoidance of doubt, the provisions of this Part of this Schedule –

(a) are in addition to and not in derogation from the application of the other provisions of this Schedule in respect of virtual assets (and transfers thereof) and VASPs, and

(b) apply to any specified business when acting in respect of a virtual asset transfer on behalf of a customer as

they apply to originating VASPs, beneficiary VASPs or intermediary VASPs, as the case may be.]

[PART IIIB
PROVISIONS APPLICABLE TO TRUSTEES AND PARTNERS

Application.

15H. This Part applies to any specified business that –

(a) carries out regulated activities within the meaning of Schedule 1, and

[(b) in the course of those activities, acts as a trustee of a relevant trust or a partner of a relevant partnership (or occupies an equivalent role to that of trustee or partner in relation to a foreign legal arrangement).]

Regulated agents and service providers.

15I. (1) [Where a specified business to which this Part applies is acting as a trustee of a relevant trust or a partner of a relevant partnership, it] must hold information on the identity of any regulated agents and service providers to the relevant trust or relevant partnership, as the case may be.

(2) A specified business that holds information within subparagraph (1) must ensure that the information –

(a) so far as is possible, is accurate and up to date, and

(b) is updated on a timely basis.

Disclosure of status.

15J. (1) Where –

(a) a specified business to whom this Part applies –

(i) enters into a business relationship with, or

(ii) carries out or is otherwise involved in an occasional transaction with,

a financial services business or a relevant business, and

(b) the specified business is carrying out the activity at subparagraph (a) in its capacity as a trustee of a relevant trust or a partner of a relevant partnership [(or the occupant of an equivalent role in relation to a foreign legal arrangement)], as the case may be,

the specified business must disclose the matters in subparagraph (b) to the financial services business or relevant business in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.

Disclosure of information.

15K. (1) A specified business within paragraph 15H may disclose upon request –

(a) to any of the relevant authorities, any information relating to the trust or partnership, as the case may be, and

(b) in the circumstances described in paragraph 15J(1)(a), to a financial services business or relevant business, any information relating to –

(i) the beneficial ownership of the trust or partnership, as the case may be, and

(ii) any assets of the trust or partnership, as the case may be, that are to be held or managed under the terms of a business relationship or occasional transaction in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.]

PART IV

DESIGNATION OF SUPERVISORY AUTHORITY

Guernsey Financial Services Commission.

16. (1) The Commission is prescribed as the supervisory authority with responsibility for monitoring and enforcing compliance by specified businesses with paragraphs and other measures made or issued under this Law, or any other enactment, for the purpose of forestalling, preventing or detecting money laundering and terrorist financing.

(2) When exercising its functions under subparagraph (1), the Commission must take into account information on, or in relation to, the money laundering and terrorist financing risk associated with particular countries, territories and geographic areas and the level of cooperation it expects to receive from relevant authorities in those countries, territories and areas, including information contained in the Financial Action Task Force Recommendations, and the NRA.

[(2A) For the avoidance of doubt, and without prejudice to the functions of the Commission under any other enactment or any action taken by the Commission under such an enactment, the functions of the Commission in subparagraph (1) include monitoring and enforcing compliance by specified businesses with any international sanctions measure that has been implemented in the Bailiwick, and references to those functions shall be construed accordingly.]

(3) The Commission is also designated as the competent authority –

(a) to register financial service businesses under Schedule 4,

(b) ...

(c) to register prescribed businesses under Schedule 5.

(4) For the purpose of subparagraph (1), **"measures"** includes rules, guidance, instructions, notices and other similar instruments.

[**Proliferation financing etc.**

16A. (1) Subject to subparagraphs (3) and (4), and without prejudice to paragraph 6(2A), the provisions of this Schedule apply to the activity within subparagraph (2) in the same way that they apply to money laundering and terrorist Financing, and shall he construed accordingly.

(2) The activity within this subparagraph is the breach of targeted financial sanctions that –

(a) are imposed under any international sanctions measure that has been implemented in the Bailiwick, and

(b) relate to the proliferation of weapons of mass destruction and its financing,

and for the avoidance of doubt, the breach of targeted financial sanctions includes their non-implementation. circumvention or evasion.

(3) Subparagraph (1) does not apply to –

(a) paragraph 10(2)(b)(ii), or

(b) subparagraph (B) in the definition of Appendix C business in paragraph 21.

(4) For the purposes of subparagraph (1), references in paragraph 3(8) to 31st March 2019 shall be read as references to 29th February, 2024.

(5) The references to the NRA in this Schedule include any national risk assessment in respect of the proliferation of weapons of mass destruction and its financing that may be published by the Committee as amended from time to time, and shall be construed accordingly.]

PART V

MISCELLANEOUS

Notification etc: financial services businesses.

17. Any person who is a financial services business by virtue of providing money or value transmission services [within the meaning of [paragraph 4 or 6] of Part I of Schedule 1 or by virtue of falling within paragraph 27(2) of Part I of

Schedule 1 (VASPs)] shall maintain a current list of its agents for such services, [which shall be made available on demand to –

(a) the Commission, and

(b) any supervisory authority that exercises, in a jurisdiction outside the Bailiwick where the financial services business or any of its agents operate, functions corresponding to any of the functions of the Commission under sections 2 and 3 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987].

Extension of sections 49B and 49C: prescribed businesses.

18. Sections 49B and 49C extend in respect of any prescribed business as if references in those sections to "financial services business" or "section 49" were references to "prescribed business" and "section 49A" respectively.

Offences as to false and misleading information.

19. If a person –

(a) in purported compliance with a requirement imposed by this Schedule, or

(b) otherwise than as mentioned in subparagraph (a) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by the person would or might be used by the Commission for the purpose of exercising its functions conferred by this Schedule,

does any of the following –

(i) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

the person is guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both or on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale or both.

Offences: general.

20. (1) Any person who contravenes any requirement of this Schedule shall be guilty of an offence and liable –

(a) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both,

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the Uniform Scale or both.

(2) In determining whether a person has contravened a requirement of this Schedule, a court may take account of –

(a) any rules and guidance in the Handbook, and

(b) any notice or instruction issued by the Commission under this Law,

that the court considers relevant to the requirement concerned.

(3) It is a defence for a person charged with an offence under this paragraph to prove that he or she has taken all reasonable precautions to avoid the commission of the offence.

Interpretation.

21. (1) In this Schedule, unless the context otherwise requires, expressions defined in this Law have those meanings, and –

"account" means a bank account and any other business relationship between a specified business and a customer which is of a similar nature having regard to the services offered by the specified business,

"Appendix C business" means –

(a) a financial services business supervised by the Commission, or

(b) a business which is carried on from –

(i) a country or territory listed in Appendix C to the Handbook and which would, if it were carried on in the Bailiwick, be a financial services business, or

(ii) the United Kingdom, the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man by a lawyer or an accountant,

and, in either case, is a business –

(A) which may only be carried on in that country or territory by a person regulated for that purpose under the law of that country or territory,

(B) the conduct of which is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations in respect of such a business, and

(C) the conduct of which is supervised for compliance with the requirements referred to in subparagraph (B), by the Commission or [a relevant supervisory authority],

[but does not include a business of the type described in paragraph 6 of Schedule 2,]

"bank" means a person who accepts deposits, including a person who does so in a country or territory outside the Bailiwick, in the course of carrying on a deposit-taking business within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994[zg] and related expressions shall be construed accordingly,

"bearer share" means a negotiable instrument that accords ownership in a legal person to the individual who possesses the relevant bearer share certificate,

"bearer warrant" means a warrant or other instrument entitling the holder to subscribe for shares or other investments in the capital of a company, title of which can be transferred by delivery,

"beneficial owner": see [paragraph 22],

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zg Order in Council No. XIII of 1994; as amended by Order in Council No. XVII of 2002; No. 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; No. XII of 2015; No. XX of 2015; No. XXXIX of 2015; No. II of 2016; No. IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; G.S.I. No. 3 of 2000; G.S.I. No. 1 of 2008; G.S.I. No. 35 of 2010; G.S.I. No. 83 of 2010; and G.S.I. No. 50 of 2017.

the **"board"** of a specified business: see subparagraph (2),

a **"branch office"** of a business means a place of business of that business that is physically separate from that business and that has no legal personality,

"business relationship" means a business, professional or commercial relationship between a specified business and a customer which is expected by the specified business, at the time when contact is established, to have an element of duration,

"business risk assessment": see paragraph 3(3),

"correspondent banking relationship" means a business relationship which involves the provision of banking services by one bank to another bank (**"the respondent bank"**),

"customer" means a person or legal arrangement who –

(a) is seeking to establish, or has established, a business relationship with a specified business, or

(b) is seeking to carry out, or has carried out, an occasional transaction with a specified business,

except that where such a person or legal arrangement is an introducer, the customer is the person or legal arrangement on whose behalf the introducer is seeking to establish or has established the business relationship,

"customer due diligence" means the steps which a specified business is required to carry out pursuant to paragraph 4(3),

"customer due diligence information" means –

(a) identification data,

(b) any account files and correspondence relating to the business relationship or occasional transaction, and

(c) all records obtained through customer due diligence measures, including the results of any analysis undertaken,

"Disclosure Law" means the Disclosure (Bailiwick of Guernsey) Law, 2007[zh],

"Economic Crime Division" means that branch of the Customs and Immigration Service responsible for the investigation of financial and economic crime,

"employee" means an individual working, including on a temporary basis, for a specified business whether under a contract of employment, a contract for services or otherwise,

"enhanced customer due diligence": see paragraph 5(3)(a),

"enhanced measures": see paragraph 5(3)(b),

"Financial Action Task Force Recommendations" means the

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zh Order in Council No. XVI of 2007; as amended by Ordinance No. XXXIX of 2008; No. VII of 2009; Nos. XIV, XIX and No. XXXVII of 2010; Nos. XVI and LIII of 2014; No. XXXIX of 2015; and No. IX of 2016.

International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation issued by the Financial Action Task Force as revised or reissued from time to time,

[**"Financial Intelligence Unit"** has the meaning given in Part III of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022,]

"foundation" means –

(a) a foundation created under the Foundations (Guernsey) Law, 2012[zi], or

(b) an equivalent or similar body created or established under the law of another jurisdiction (and howsoever 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

(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),

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zi Order in Council No. I of 2013; as amended by Order in Council No. VI of 2017; and Ordinance No. IX of 2016.

"founder" means –

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

(b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person corresponding to a founder described in paragraph (a),

"the FSB Regulations" means the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007,

"funds" means assets of all types, [including, for the avoidance of doubt, virtual assets,] and documents or instruments evidencing title to or an interest in such assets,

"Handbook" means the Handbook on Countering Financial Crime and Terrorist Financing, as revised or re-issued from time to time by the Commission,

"high risk relationship" means a business relationship or an occasional transaction which has a high risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

"identification data" means documents, data and information from a reliable and independent source,

"international organisation" means an entity –

(a) which was established by a formal political agreement between its member states that has the status of an international treaty,

(b) the existence of which is recognised by law in its member states, and

(c) which is not treated as a resident institutional unit of the country in which it is located,

"introducer" means an Appendix C business who is seeking to establish or has established, on behalf of another person or legal arrangement who is its customer, a business relationship or an occasional transaction with a specified business,

"joint arrangement" has the same meaning as in regulation 5 of the Beneficial Ownership (Definition) Regulations, 2017,

"joint interests" has the same meaning as in regulation 4 of the Beneficial Ownership (Definition) Regulations, 2017,

"legal arrangement" includes an express trust and any vehicle or arrangement whatsoever which has a similar legal effect to an express trust,

"low risk relationship" means a business relationship or an occasional transaction which has a low risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

"minimum retention period" means –

(a) in the case of any customer due diligence information –

(i) a period of five years starting from the date –

(A) where the customer has established a business relationship with the specified business, that relationship ceased,

(B) where the customer has carried out an occasional transaction with the specified business, that transaction was completed, or

(ii) such other longer period as the Commission may direct,

(b) in the case of a transaction document –

(i) a period of five years starting from the date that both the transaction and any related transaction were completed, or

(ii) such other longer period as the Commission may direct,

[**"Money Laundering Compliance Officer"** means a person of at least manager level appointed by a specified business to monitor compliance with policies, procedures and controls to forestall, prevent and detect money laundering and terrorist financing,]

[**"Money Laundering Reporting Officer"** means a person of at least

manager level appointed by a specified business to make or receive disclosures under Part I of the Disclosure Law and sections 12, 15 and 15A of the Terrorism Law,]

"nominee shareholder" has the same meaning as "nominee" has in the Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017[zj],

"notify" means notify in writing,

"NRA" means the National Risk Assessment published by the Committee as amended from time to time,

"occasional transaction" means any transaction involving more than £10,000 [(or [£1,000 or more] in the case of a specified business described in paragraph 27(2) of Schedule 1 ("VASPs"))], carried out by the specified business in question in the course of that business, where no business relationship has been proposed or established and includes such transactions carried out in a single operation or two or more operations that appear to be linked,

"the PB Regulations" means Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008,

"politically exposed person": see paragraph 5(4),

"prescribed business" means any business which is a relevant business for the purposes of this Law, but does not include a business of a

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zj G.S.I. No. 102 of 2017; as amended by G.S.I. No. 120 of 2017.

type described in paragraphs 2 or 4 of Schedule 2,

"protector" has the meaning in section 58 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000[zk],

[**"regulated agent"** means a person who –

(a) is acting in relation to or on behalf of a relevant trust or relevant partnership, as the case may be, and

(b) for the purposes of so doing is required to hold, and does hold, a licence from the Commission or a corresponding body in another jurisdiction,]

[**"relevant authorities"** means –

(a) His Majesty's Procureur,

(b) a police officer,

(c) the Committee,

(d) the Commission,

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zk Order in Council No. I of 2001; as amended by No. I of 2000; No. VIII of 2008; No. XXV of 2008; No. XIII of 2010); No. XIX of 2010; No. I of 2013; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. VII of 2009; No. XII of 2015; No. XXXIX of 2015; No. II of 2016; No. IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; G.S.I. No. 3 of 2008; G.S.I. No. 83 of 2010; G.S.I. No. 4 of 2013; G.S.I. No. 50 of 2017; G.S.I. No. 56 of 2017; and G.S.I. No. 72 of 2017.

(e) the Alderney Gambling Control Commission,

(f) the Director of the Economic and Financial Crime Bureau,

(g) the Financial Intelligence Unit,

(h) the Director of the Revenue Service,

(i) the Registrar of Charities and other Non Profit Organisations,

(j) the Registrar of Non-Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010,

(k) the Registrar for the purposes of each of the Beneficial Ownership Laws,

(l) the Registrar of Companies,

(m) the Registrar of Limited Liability Partnerships,

(n) the Registrar of Foundations,

(o) the Greffier, and

(p) the Registrar for the purposes of the Companies (Alderney) Law, 1994,]

"relevant employee" means any –

(a) member of the board of the specified business,

(b) member of the management of the specified business, and

(c) employee whose duties relate to the specified business,

the **"relevant enactments"** means –

(a) this Law,

(b) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000[zl],

(c) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011[zm],

[(d) the Sanctions (Bailiwick of Guernsey) Law, 2018,]

[(e) any UK enactment within the meaning of, and as implemented by, the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020,]

(f) ...

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zl 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. XIII of 2010; Ordinance No. XXXIII of 2003; No. XXXVIII of 2008; Nos. XV and XXV of 2010; No. XVI of 2014; and No. IX of 2016.

zm Order in Council No. XI of 2011; amended by Ordinance No. IX of 2016.

(g) ...

(h) ...

(i) ...

(j) the Terrorism Law,

(k) the Disclosure Law,

(l) the Transfer of Funds (Guernsey) Ordinance, 2017[zt],

(m) the Transfer of Funds (Alderney) Ordinance, 2017[zu],

(n) the Transfer of Funds (Sark) Ordinance, 2017[zv],

(o) the Disclosure (Bailiwick of Guernsey) Regulations, 2007[zw],

(p) the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007[zx],

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zt Ordinance No. XXVII of 2017.

zu Alderney Ordinance No. III of 2017.

zv Sark Ordinance No. X of 2017.

zw G.S.I. No. 34 of 2007.

zx G.S.I. No. 36 of 2007; as 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.

(q) ...

(r) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008[zy],

(s) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017[zz],

(t) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017[zaa],

(u) the Beneficial Ownership (Definition) Regulations, 2017,

(v) the Beneficial Ownership (Alderney) (Definition) Regulations, 2017[zbb],

(w) the Beneficial Ownership of Legal Persons (Provision of Information) (Transitional Provisions) Regulations, 2017[zcc],

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zy Order in Council No. XII of 2009; as amended by Ordinance No. XXXIX of 2015; Nos. II and IX of 2016; Alderney Ordinance No. III of 2017; Ordinance No. XXVII of 2017; and Sark Ordinance No. X of 2017.

zz Order in Council No. VI of 2017; as amended by Ordinance No. XXVIII of 2017.

zaa Order in Council No. VII of 2017; as amended by Alderney Ordinance No. X of 2017.

zbb Alderney Statutory Instrument No. 3 of 2017.

zcc G.S.I. No. 87 of 2017.

(x) the Beneficial Ownership of Legal Persons (Provision of Information) (Transitional Provisions) (Alderney) Regulations, 2017,

(y) the Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017,

(z) the Beneficial Ownership of Legal Persons (Nominee Relationships) (Alderney) Ordinance, 2017[zdd],

(aa) the Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017[zee],

and such other enactments relating to money laundering and terrorist financing as may be enacted from time to time in the Bailiwick,

"relevant legal person" has the meaning given in the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,

[**"relevant supervisory authority"** has the meaning given in section 59(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020,]

"risk" means a risk of money laundering or terrorist financing occurring and "risk assessment" shall be construed accordingly,

[**"service provider"** means a person, other than a regulated agent, who

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zdd Alderney Ordinance No. XI of 2017.

zee G.S.I. No. 120 of 2017.

is providing investment advisory or management services, managerial services, accountancy services, tax advisory services, legal services, trust services, partnership services or corporate services in relation to a relevant trust or relevant partnership, as the case may be,]

"specified business": see paragraph 1(1),

"subordinate legislation" means any ordinance, statutory instrument, paragraph, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"Terrorism Law" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002[zff],

"terrorist financing" has the meaning given in the Terrorism Law,

"transaction document": see paragraph 14, [...]

[**"VASPs"** and **"virtual asset"**: see paragraph 15B,]

"voting rights" has the same meaning as in regulation 7 of the Beneficial Ownership (Definition) Regulations, 2017.

(2) Subject to subparagraph (3), in this Ordinance the **"board"** of a specified business means –

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zff Order in Council No. XVI of 2002; as amended by Order in Council No. I of 2000; No. VII of 2005; No. XIII of 2006; No. XIII of 2010; No. XI of 2011; No. XIV of 2012; Ordinance No. XXXIII of 2003, No. XLVI of 2007; No. XIII of 2010; No. XX of 2010; No. XXXVII of 2010; No. XXIX of 2014; No. LIV of 2014; No. IX of 2016; G.S.I. No. 16 of 2003; G.S.I. No. 41 of 2005; and G.S.I. No. 5 of 2017.

(a) the board of directors of that specified business, where it is a body corporate, or

(b) the senior management of a specified business, where it is not a body corporate.

(3) References in this Ordinance to the board of a specified business shall, where the specified business is a sole trader, be construed consistently with the provisions of the Handbook.

(4) References in this Schedule to **"forming a suspicion"** of money laundering or terrorist financing, and any related expressions, are references to a person –

(a) knowing or suspecting, or

(b) having reasonable grounds for knowing or suspecting,

that another person is engaged in –

(i) money laundering or that certain property is or is derived from the proceeds of criminal conduct (within the meaning of the Disclosure Law), or

(ii) terrorist financing or that certain property is or is derived from terrorist property (within the meaning of the Terrorism Law),

as the case may be.

Meaning of "beneficial owner".

22. (1) References in this Schedule to a **"beneficial owner"** are to be construed in accordance with subparagraphs (2) to (11).

(2) In relation to a legal person, **"beneficial owner"** means, subject to subparagraphs (3) to (11) –

(a) the natural person who ultimately controls the legal person through ownership; or if no such person exists or can be identified,

(b) the natural person who ultimately controls the legal person through other means; or, if no such person exists or can be identified,

(c) the natural person who holds the position of a senior managing official of the legal person.

(3) In any case where –

(a) the natural person who controls the legal person through ownership has been identified,

(b) there are reasonable grounds to believe that the legal person is also ultimately controlled by another natural person through other means, and

(c) that other natural person can be identified,

[both the persons described in (2)(a) and (b) are a beneficial owner in relation to the legal person].

(4) In any case where a trust or other legal arrangement controls a legal person through ownership, the beneficial owners of that legal person are the beneficial owners of that trust or legal arrangement as defined in subparagraphs (8) and (9).

(5) In any case where a transparent legal person has control of a legal person through ownership (**"the controlled legal person"**), that transparent legal person shall be treated as a natural person for the purposes of this Schedule, and therefore (for the avoidance of doubt) as the beneficial owner of the controlled legal person.

(6) For the purposes of subparagraph (2), a person has control of a legal person through ownership if that person holds, directly or indirectly, any of the following –

(a) if the legal person is a company –

(i) more than 25% of the shares in the company,

(ii) more than 25% of the voting rights in the company, or

(iii) the right to appoint or remove directors holding a majority of voting rights on all or substantially all matters at meetings of the board,

(b) if the legal person is any other form of legal person other than a foundation,

(i) more than 25% of the shares in the legal person or an interest equivalent to a shareholding of more than 25%, including but not limited to an entitlement to more than 25% of the assets of the legal person in the event of its winding up or dissolution,

(ii) more than 25% of the voting rights in the conduct or management of the legal person, or

(iii) the right to appoint or remove a majority of the managing officials of the legal person holding a majority of voting rights on all or substantially all matters at meetings of the legal person that are equivalent to board meetings.

(c) if the legal person is a foundation,

(i) any of the rights and interests under subparagraph (6)(b)(i) to (iii), or

(ii) a vested beneficial interest or future entitlement to benefit from more than 25% of the assets of the foundation,

and for the purposes of this paragraph, holding more than 25% of the shares in a company means holding a right or rights to share in more than 25% of the capital or, as the case may be, the profits of the company.

(7) A person holds shares or rights for the purposes of subparagraph (6) if –

(a) those shares or rights constitute joint interests,

(b) those shares or rights are held under a joint arrangement,

(c) those shares or rights are held on behalf of that person by a nominee,

(d) in the case of rights, that person controls their exercise,

(e) in the case of rights only exercisable in certain circumstances, those rights are to be taken into account,

(f) in the case of rights attached to shares held by way of security provided by a person, the rights are still exercisable by that person.

(8) In relation to a trust, [**"beneficial owner"** means, for the purposes of this Schedule –]

(a) any beneficiary who is a natural person, whether his or her interest under the trust is vested, contingent or discretionary, and whether that interest is held directly by that person or as the beneficial owner of a legal person or a legal arrangement that is a beneficiary of the trust,

(b) any trustee, settlor, protector or enforcer of the trust who is a natural person or that is a transparent legal person,

(c) if any trustee, settlor, protector or enforcer of the trust is a legal person (other than a transparent legal person), or a legal arrangement, any natural person who is the beneficial owner of that legal person or legal arrangement,

(d) any natural person (other than a beneficiary, trustee, settlor, protector or enforcer of the trust), who has, under the trust deed of the trust or any similar document, power to –

(i) appoint or remove any of the trust's trustees,

(ii) direct the distribution of funds or assets of the trust,

(iii) direct investment decisions of the trust,

(iv) amend the trust deed, or

(v) revoke the trust,

(e) any transparent legal person (other than a trustee, settlor, protector or enforcer of the trust) that has any of the powers set out in subparagraph (d),

(f) where a legal person (other than a transparent legal person) or a legal arrangement holds any of the powers within subparagraph (d) (other than a trustee, settlor, protector or enforcer of the trust), any natural person

who is a beneficial owner of that legal person or legal arrangement, and

(g) any other natural person who exercises ultimate effective control over the trust.

(9) In relation to a legal arrangement other than a trust, **"beneficial owner"** means any natural person or transparent legal person who is in a position in relation to that legal arrangement that is equivalent to the position of any natural person or transparent legal person set out at subparagraph (8).

(10) For the purposes of this paragraph, **"transparent legal person"** means –

(a) a company that is listed on a recognised stock exchange within the meaning of the Beneficial Ownership (Definition) Regulations, 2017, or a majority owned subsidiary of such a company,

(b) a States trading company within the meaning of the States Trading Companies (Bailiwick of Guernsey) Law, 2001[zgg],

(c) a legal person controlled by the States of Alderney through ownership within the meaning of the Beneficial Ownership (Alderney) (Definition) Regulations, 2017 (or any successor regulations made under section 25 of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017, or

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zgg Order in Council No. XII of 2001.

(d) a regulated person within the meaning of section 41(2) of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017.

(11) For the purposes of this paragraph –

(a) a reference (however expressed) to a person controlling the exercise of a right is to be construed consistently with regulation 10(2) of the Beneficial Ownership (Definition) Regulations, 2017,

(b) a reference (however expressed) to taking rights into account is to be construed consistently with regulation 11 of the Beneficial Ownership (Definition) Regulations, 2017, and

(c) a reference (however expressed) to rights being exercisable by a person is to be construed consistently with regulation 12(a) and (b) of the Beneficial Ownership (Definition) Regulations, 2017.]

NOTES

Schedule 3 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1(12), Schedule 1, with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

In Schedule 3,

first, the words, parentheses and figures in square brackets in paragraph 1(1) and, second, the words in square brackets in paragraph 1(2) were substituted, third, paragraph 1(3) was inserted, fourth, paragraph 6(1) and, fifth, paragraph 6(2)(b) were substituted, sixth, the words in square

brackets in paragraph 7(2)(c) were substituted, seventh, paragraph 7(3) was inserted, eighth, the word in square brackets in paragraph 11(1)(b) was substituted, ninth, the words in square brackets in paragraph 12(4) were substituted and paragraph 12(5) was inserted, tenth, paragraph 13(2A) and the words in square brackets in paragraph 13(2) were both inserted, eleventh, paragraph 14(7) and, twelfth, the words in the second pair of square brackets in the definition of the expression "Appendix C business) were both inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023, regulation 1, respectively paragraph (2)(a)(i), paragraph (2)(a)(ii), paragraph (2)(a)(iii), paragraph (2)(b)(i), paragraph (2)(b)(ii), paragraph (2)(c)(i), paragraph (2)(c)(ii), paragraph (2)(d), paragraph (2)(e), paragraph (2)(f), paragraph (2)(g) and paragraph (2)(h), with effect from 8th July, 2023 and, in accordance with the transitional provisions of regulation 2(1) of the (No. 2) Regulations, paragraph 20 of this Schedule shall not apply to a paragraph 2(3A) business (as defined in regulation 2(2) thereof) until 1st October 2023;

first, at the end of paragraph 3(3)(c)(ii) the punctuation in square brackets was substituted and the words in square brackets thereafter were inserted, second, paragraph 15(1)(ba) was inserted and, third, the word in square brackets in paragraph 15(2) was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Regulations, 2023, respectively regulation 1(2), regulation 1(3) and regulation 1(4),with effect from 8th July, 2023;

first, the words in square brackets in paragraph 4(3)(c), second, paragraph 5(3)(a)(ii), third, the word, symbol and figures in paragraph 15(C)(1)(e), fourth, the word, symbol and figures in paragraph 15(C)(2)(c), fifth, paragraph 15H(b) was substituted and sixth, the words in square brackets in paragraph 15I(1) were all substituted, seventh, the words in square brackets in paragraph 15J(1)(b) were inserted and, eighth, the symbol, figures and words in square brackets within the square brackets in the definition of the expression "occasional transaction" in paragraph 21(1) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 3) Regulations, 2024, respectively regulation 1(2), regulation 1(3), regulation 1(4), regulation 1(5), regulation 1(6), regulation 1(7), regulation 1(8) and regulation 1(9), with effect from 22nd April, 2024;

first, paragraph 4(7), second, the words in square brackets in paragraph 5(4) and third, the words in square brackets in paragraph 5(4)(d) were substituted, fourth, paragraph 5A was inserted, fifth, the words in square brackets in paragraph 12(1)(a) and paragraph 15(1)(a), sixth, the word and figures in square brackets in the definition of the expression "beneficial owner" in paragraph 21, and the definitions of the expressions "Money Laundering Compliance Officer" and "Money Laundering Reporting Officer" in that paragraph, and, seventh, the words in square brackets in paragraph 22(8) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2019, respectively regulation 2, regulation 3(a), regulation 3(b), regulation 4, regulation 5,

regulation 6 and regulation 7, with effect from 13th June, 2019;

first, the figures, parentheses, letters and word in square brackets in paragraph 9, second, the words and figure in paragraph 17 and, third, the words, parentheses and letters in square brackets in paragraph 22(3) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 2) Regulations, 2024, respectively regulation 1(2), regulation 1(3) and regulation 1(4), with effect from 6th March, 2024;

first, the words in square brackets in paragraph 10(2)(b)(iii) were substituted, second, Part IIIA and paragraphs 15A to 15G thereof were inserted, third, paragraph 16(3)(b) was repealed, fourth, the words in square brackets in paragraph 17 were inserted, the words in square brackets in paragraph 21(1) in the definitions of the expressions, fifth, "Appendix C business" (the first pair of square brackets therein) were substituted, sixth, "funds" and, seventh, "occasional transaction" were both inserted, eighth, paragraph (q) of the definition of the expression "relevant enactments" in paragraph 21(1) was repealed, ninth, the definition of the expression "relevant supervisory authority" therein was inserted and, tenth, the word omitted in square brackets after the definition of the expression "transaction document" was repealed and the definition of the expressions "VASPs" and "virtual asset" in paragraph 21(1) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2023, section 4, respectively paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e)(i), paragraph (e)(ii), paragraph (e)(iii), paragraph (e)(iv), paragraph (e)(v) and paragraph (e)(vi), with effect from 7th July, 2023;

first, Part IIIB and paragraphs 15H to 15K thereof were inserted and, second, the definitions of the expressions "regulated agent", "relevant authorities" and "service provider" in paragraph 21(1) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations, 2023, respectively regulation 1(4) and regulation 1(5), with effect from 8th July, 2023;

the words "Financial Intelligence Unit" in square brackets, wherever occurring, were substituted by the Criminal Justice (Miscellaneous Amendments) (Bailiwick of Guernsey) Ordinance, 2022, section 11, with effect from 21st December, 2022;

first, paragraph 16(2A) and, second, paragraph 16A were inserted, third, subparagraph (d) and, fourth, subparagraph (e) of the definition of the expression "relevant enactments" were substituted and, fifth, subparagraphs (f) to (i) of that definition were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) Regulations, 2024, respectively regulation 1(2), regulation 1(3), regulation 1(4)(a), regulation 1(4)(b) and regulation 1(4)(c), with effect from 6th February, 2024;

the words in the second pair of square brackets in paragraph 17 were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment of Schedule 3) (No. 4) Regulations, 2024, regulation 1, with effect from 24th April. 2024;

the definition of the expression "Financial Intelligence Unit" in paragraph 21 was substituted by the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022, section 11(1) and section 11(3)(c), with effect from 20th October, 2022.

The following Handbooks containing the rules and guidance referred to in paragraph 3(7) of this Schedule have been issued by the Guernsey Financial Services Commission:

Handbook on Countering Financial Crime and Terrorist Financing, 2019 (March, G.S.I. No. 75 of 2019);
Handbook on Countering Financial Crime and Terrorist Financing, 2019 (June, G.S.I. No. 76 of 2019);
Handbook on Countering Financial Crime and Terrorist Financing (G.S.I. No. 146 of 2023);
Handbook on Countering Financial Crime (AML/CFT/CPF) (G.S.I. No. 43 of 2024).

The Banking Supervision (Bailiwick of Guernsey) Law, 1994 and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 have both since been repealed by, respectively, the Banking Supervision (Bailiwick of Guernsey) Law, 2020, section 67(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 68 of the 2020 Law; and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, section 62(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 60 of the 2020 Law.

The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 and the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 have both since been revoked by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 2, with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

The Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017 have since been revoked by the Limited Partnerships Guernsey) Law, 1995 (Amendment) Regulations, 2023, regulation 3(1), with effect from 13th September, 2023, subject to the provisions of regulation 3(2) of the 2023 Regulations.

[SCHEDULE 4

REGISTRATION OF FINANCIAL SERVICES BUSINESSES

Application.

1. This Schedule applies to those persons who are financial services businesses by virtue of falling within [paragraphs 21 to 27(1)] of Part I of Schedule 1 to this Law and who are also financial services businesses by virtue of falling within [paragraph 4 or 6 (money service business or money or value transfer services) or 13 or 14 (money broking or money changing services)] of the said Part I[; and this Schedule also applies to persons who are financial services businesses by virtue of falling within paragraph 27(2) of the said Part I (VASPs), whether or not they are also financial services businesses by virtue of falling within the said paragraphs 4, 6, 13 or 14].

Requirement to register.

2. (1) Subject to subparagraph (2), a financial services business to which this Schedule applies must be registered by the Commission for the purposes of this Schedule.

(2) A financial services business which, immediately prior to the commencement of this Schedule ("Commencement"), was registered under Part IIIA of the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007, shall be deemed to have been registered by the Commission on Commencement for the purposes of this Schedule.

Application for registration.

3. A financial services business to which this Schedule applies shall apply to the Commission in such form and manner as the Commission may determine; and such application shall be accompanied by a statement of –

(a) the legal name and any trading names of the applicant,

(b) its principal place of business and any other business addresses in the Bailiwick, and

[(c) details of the type of money service business or money or value transfer services, money broking or money changing services or VASP services or activities provided or undertaken.]

General requirements.

4. A financial services business which has been registered under this Schedule must inform the Commission of any change to the information given to the Commission for the purposes of its application for registration under paragraph 3, or to any information given to the Commission thereafter –

(a) prior to making such a change, or

(b) where a change is sudden or unexpected, promptly after such change is made,

and for the purposes of this paragraph a change to such information shall include the intention to cease providing money or value transfer services or money currency or changing services.

List of, and information as to, registered financial services businesses.

5. (1) The Commission shall –

(a) establish and maintain, in such form as the Commission may determine, a list of all financial services businesses which are for the time being registered under this Schedule,

(b) make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of that list, and

(c) publish a copy of the list on the Commission's official website.

(2) The list maintained under subparagraph (1) shall contain, in relation to each financial services business registered under this Schedule –

(a) a statement of –

(i) the legal name and any trading names of the business,

(ii) its principal place of business and any other business addresses in the Bailiwick, and

(iii) details of the type or types of financial services business falling within [paragraph 4 or 6 (money service business or money or value transfer services), 13 or 14 (money broking or money changing services) or 27(2) (VASPs) of Part I of Schedule 1] by virtue of which it is a financial services business, and

(b) such other particulars as the Commission may determine.

(3) If at any time it appears to the Commission that the list maintained under subparagraph (1), or any particular contained in an entry in that list, is, for any reason, inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

(4) The Commission may give public notice of the fact that a particular financial services business has been registered, or has ceased to be registered, under this Schedule.

Offences as to false and misleading information.

6. If a person –

(a) in purported compliance with a requirement imposed by this Schedule, or

(b) otherwise than as mentioned in subparagraph (a) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by the person would or might be used by the Commission for the purpose of exercising its functions conferred by this Schedule,

does any of the following –

(i) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

the person is guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both or on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale or both.

Offences: general.

7. Any person who contravenes any requirement of this Schedule shall be guilty of an offence and liable –

(a) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both,

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the Uniform Scale or both.]

NOTES

Schedule 4 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1(12), Schedule 2, with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

In Schedule 4, first, the words in the first and, second, second pairs of square brackets in paragraph 1 were substituted and the words in third, the third pair of square brackets therein were inserted, fourth, paragraph 3(c) was substituted and, fifth, the words in square brackets in paragraph 5(2)(a)(iii) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2023, section 5, respectively paragraph (a)(i), paragraph (a)(ii), paragraph (a)(iii), paragraph (b) and paragraph (c), with effect from 7th July, 2023.

The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 have since been revoked by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 2, with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

[SCHEDULE 5

REGISTRATION OF PRESCRIBED BUSINESSES

Application of this Schedule.

1. [(1)] [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,] This Schedule does not apply to a prescribed business where –

(a) the total turnover of the person carrying on the prescribed business in respect of the prescribed business does not exceed £50,000 per annum,

(b) the prescribed business –

(i) if it is an estate agent, does not hold deposits, or

(ii) if it is a prescribed business other than an estate agent, does not carry out occasional transactions,

(c) the services of the prescribed business are provided only to customers or clients resident in the Bailiwick, and

(d) the funds received by the prescribed business are drawn on a bank operating from or within the Bailiwick.

[(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.]

Registration of prescribed businesses.

2. (1) Subject to subparagraph (2), a prescribed business carrying on, or holding itself out as carrying on, business in, or from within, the Bailiwick must register with the Commission in accordance with this Schedule.

[(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.]

(2) A prescribed business which, immediately prior to the commencement of this Schedule ("Commencement"), was registered under Part IV of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008, shall be deemed to have been registered by the Commission on Commencement for the purposes of this Schedule.

(3) A prescribed business 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 legal name and any trading names of the business,

(ii) its place and date of incorporation or establishment,

(iii) its principal place of business and any other business addresses in the Bailiwick,

(iv) details of the type or types of business carried out,

(v) the names of the Money Laundering Compliance Officer and of the Money Laundering Reporting Officer, and [the names, dates of birth and places of residence of the directors or partners (as the case may be) and beneficial owners, and]

(vi) the number of full time (or full time equivalent) members of staff (including executive directors and partners), and

(b) subject to subparagraph (4), a non-refundable registration fee of [£830] plus, where the business has more than 5 full time (or full time equivalent) members of staff (including executive directors and partners), whichever is the lesser of –

(i) [for each full time (or full time equivalent member of staff (including executive directors and partners) –

(A) where the number of staff equals 6, £945,

(B) where the number of staff equals 7, £1,080,

(C) where the number of staff equals 8, £1,205,

(D) where the number of staff equals 9, £1,335,

(E) where the number of staff equals 10, £1,460,

(F) where the number of staff equals 11, £1,585,

(G) where the number of staff equals 12, £1,710,

(H) where the number of staff equals 13, £1,840,

(I) where the number of staff equals 14, £1,965,

(J) where the number of staff equals 15, £2,090,

(K) where the number of staff equals 16, £2,215,

(L) where the number of staff equals 17, £2,345,

(M) where the number of staff equals 18, £2,470,

(N) where the number of staff equals 19, £2,595,

(O) where the number of staff equals 20, £2,720,

(P) where the number of staff equals 21, £2,850,

(Q) where the number of staff equals 22, £2,975,

(R) where the number of staff equals 23, £3,105,

(S) where the number of staff equals 24, £3,225, and

(T) where the number of staff is equal to or greater than 25, £3,350,]

(ii) [...],

provided that where the statement referred to in subparagraph (a) is submitted on or after 1 February in any year the fee, and any additional amount due under the preceding provisions of this subparagraph, payable upon registration, shall be reduced by one twelfth and by a further twelfth for each complete calendar month which has elapsed during the period commencing upon the 1 February in question and ending on the day of that year in which the statement is submitted.

[(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.]

(4) Any fee payable under subparagraph (3)(b) or paragraph 3(2) shall be reduced as follows –

(a) by 50 per centum where the registration relates to a business –

(i) which holds or is deemed to hold a licence, consent, registration, permission or

authorisation from the Commission under any of the [supervisory Laws], or

(ii) which is a member of a group of bodies corporate where one or more other members of that group are also under an obligation to pay a registration fee to the Commission under this paragraph, or

(b) by 75 per centum where the registration relates to a business –

(i) which holds or is deemed to hold a licence, consent, registration, permission or authorisation from the Commission under any of the [supervisory Laws], and

(ii) which is a member of a group of bodies corporate where one or more other members of that group are also under an obligation to pay a registration fee to the Commission under this paragraph.

[(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 disapplied 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.]

[(5B) The Commission may refuse to register a business under this Schedule in circumstances where in respect of a director, partner or beneficial owner of that business –

(a) there has been a failure to comply with paragraph 4 or paragraph 5 of Schedule 6 (Administrator of estate agents), Schedule 7 (Administrator of accountants), or

Schedule 8 (Administrator of non-locally qualified legal professionals),

(b) there has been a failure to comply with paragraph 3 or paragraph 4 of Schedule 9 (Functions of His Majesty's Greffier regarding advocates),

(c) an order has been made under paragraph 6 of Schedule 6, paragraph 6 of Schedule 7, or paragraph 6 of Schedule 8, or

(d) a referral has been made under paragraph 5 of Schedule 9.]

(6) The [Commission after consultation with the Committee] may amend any fee payable under this paragraph by regulations.

(7) In this paragraph, "Money Laundering Compliance Officer" and "Money Laundering Reporting Officer" have the same meanings as in Schedule 3[, 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].

Validity of registration, annual fee and general requirements.

3. (1) The registration of a prescribed business shall remain effective until it is surrendered under paragraph 6.

(2) An annual fee calculated in the same manner as provided for [under paragraph 2(3)(b) or 2(3A)(b) (as the case may be) (subject to any reduction applicable under paragraph 2(3)(b))] shall be payable, on, or within 30 days following 1 January in each calendar year following the year of registration, in respect of each prescribed business registered under this Part.

(3) A prescribed business must inform the Commission of any change occurring to the information given to the Commission for the purposes of its registration under [paragraph 2(3)(a)(i) to (v) or 2(3A)(i) to (iii) (as the case may be)] or to any information given to the Commission thereafter –

(a) prior to making such a change, or

(b) where a change is sudden or unexpected, promptly after such change is made,

and for the purposes of this paragraph a change to such information shall include the intention to cease being a prescribed business to which this Schedule applies.

(4) A prescribed business [(other than a business of the type described in paragraph 6 of Schedule 2, in respect of which subparagraph (5) applies)] must provide to the Commission by 30 November in each year a statement of the number of full time (including full time equivalent) members of staff (including executive directors and partners) employed by, or forming, the business as at 14 November in that year, calculated in accordance with the following formula –

$$A + B + C = X$$

Where

A is the number of full time employees,

B is the number of executive directors and partners,

C is the total hours worked by part time employees divided by the number of hours in the prescribed business's working week rounded up to the nearest whole number, where the result is equal to or greater than .5 and rounded down if less than .5

X is the number of full time (including full time equivalent) members of staff.

[(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.]

[**Administrative financial penalties.**

3A. (1) The Commission may by regulation make such provision as it thinks fit in respect of the charging of administrative financial penalties for –

(a) the late payment of fees or charges required to be paid, or

(b) the late filing or delivery of information or documents required to be filed or delivered,

by or under the provisions of this Schedule.

(2) Regulations under this paragraph may –

(a) prescribe the amount and basis of calculation of penalties payable in the circumstances described in subparagraph (1),

(b) provide for the payment and collection of fees, charges and penalties and for their recovery by the Commission as a civil debt,

(c) make provision in relation to appeals (including, without limitation, provision applying the provisions of section 106 of the Financial Services Business (Enforcement) (Bailiwick of Guernsey) Law, 2020, subject to such exceptions, adaptations and

modifications as may be prescribed by the regulations), and

(d) make provision under the powers conferred by this Schedule notwithstanding the provisions of any enactment for the time being in force.

Rules as to annual return.

3B. (1) The Commission may make rules requiring the submission by prescribed businesses to the Commission, in such form and manner, at such times or intervals and in respect of such periods as may be prescribed, of an annual return.

(2) The annual return shall contain such information and shall be accompanied by such documents as may be prescribed, being information and documents considered by the Commission to be necessary -

(a) for the purposes of enabling the Commission to perform its functions,

(b) for the purposes of responding to the obligations of the Bailiwick in relation to international co-operation and mutual assistance, including without limitation information and documents relating to financial crime, including money laundering and financing of terrorism,

(c) in the interests of –

(i) the public, or

(ii) the reputation of the Bailiwick as a finance centre.

(3) Information and documents submitted pursuant to rules under this paragraph shall be in such form as may be prescribed or, if no form is prescribed, as the Commission may reasonably require.

(4) In this paragraph **"prescribed"** means prescribed by the rules.]

Conditions of registration.

4. (1) The Commission may, when registering a prescribed business or at any time thereafter, impose such conditions in respect of the registration as it thinks fit.

(2) The Commission may vary or rescind any condition of a registration.

(3) Without prejudice to the generality of paragraph (1), the conditions which may be imposed in respect of a registration may make provision in the interests of the clients or potential clients of the prescribed business and for the protection of the public or of the reputation of the Bailiwick as a finance centre, and conditions may (without limitation) –

(a) require the prescribed business to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,

(b) impose limitations on the acceptance or carrying on of business,

(c) prohibit the prescribed business from soliciting (whether at all or in any specified manner) business,

either generally or from particular persons or classes of persons, or

(d) require the prescribed business to provide, in whatever form and manner and at whatever time the Commission may reasonably determine, evidence of compliance with any provision of, or made under, any of the relevant enactments.

(4) The Commission may give public notice of the imposition, variation or rescission of a condition in respect of a registration and the date from which any such condition is effective, and, in deciding whether or not to do so, the Commission shall have regard to the interests of the clients and potential clients of the prescribed business and the protection of the public and the reputation of the Bailiwick as a finance centre.

(5) Where the Commission decides, otherwise than with the agreement of the prescribed business concerned, to impose, vary or rescind any condition in respect of a registration, the Commission shall serve upon the prescribed business concerned, in accordance with the provisions of paragraph 8, notice in writing of the decision setting out particulars of the condition in question.

[**Suspension or revocation of registration.**]

5. (1) The Commission may suspend [or revoke] the prescribed business's registration at the request of the business concerned.

[(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) [or (5B)].]

(2) The suspension of a registration in pursuance of [subparagraph (1) or (1A)] shall be for such period as is approved for the purpose by the Commission.

(3) During a period of suspension of a registration in pursuance of subparagraph (1) the suspended prescribed business may not carry on, or hold itself out as carrying on, business of the description to which the registration relates in or from within the Bailiwick.

[(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.]

Surrender of registration.

6. (1) A prescribed business may surrender its registration by notice in writing served upon the Commission.

(2) A surrender shall take effect upon service of the notice or at such later date as may be specified therein and, where a later date is so specified, the prescribed business may by a further notice in writing served upon the Commission substitute an earlier date upon which the surrender is, subject as aforesaid, to take effect, not being earlier than the date upon which the further notice was served.

(3) The surrender of a registration shall be irrevocable unless it is expressed to take effect on a particular date and, before that date, the Commission, upon the written application of the prescribed business concerned by notice in writing to that business, allows the surrender to be withdrawn.

List of, and information as to, registered prescribed businesses.

7. (1) The Commission shall –

(a) establish and maintain, in such form as the Commission may determine, a list of all prescribed businesses which are for the time being registered under this Part,

(b) [subject to subparagraph (1A),] make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of that list, and

(c) [subject to subparagraph (1A),] publish a copy of the list on the Commission's official website.

[(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.]

(2) The list maintained under subparagraph (1) shall contain, in relation to each prescribed business –

(a) a statement of –

(i) the legal name and any trading names of the business, and

(ii) its principal place of business and any other business addresses in the Bailiwick, and

(b) such other particulars as the Commission may determine.

(3) If at any time it appears to the Commission that the list maintained under subparagraph (1), or any particular contained in an entry in that list, is inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

(4) The Commission may give public notice of the fact –

(a) that a particular business –

(i) has been registered under this Part, or

(ii) has ceased to be registered by virtue of the voluntary suspension or surrender of the registration, or

(b) that a condition upon the registration of a particular business has been imposed, varied or rescinded,

and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the protection and enhancement of the reputation of the Bailiwick as a finance centre.

Notice of Commission's decision to impose conditions, etc.

8. Notice of a decision of the Commission required to be served under paragraph 4(5) –

(a) shall state the grounds of the Commission's decision, and

(b) shall give particulars of the right of appeal conferred by paragraph 9.

Appeals against decisions of Commission.

9. (1) A person aggrieved by a decision of the Commission to impose, vary or rescind any condition in respect of the person's registration under paragraph 4[, 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),] may appeal to the Court against the decision.

(2) The grounds of an appeal under this paragraph are 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.

(3) An appeal under this paragraph shall be instituted –

(a) within a period of 28 days immediately following the date of the notice of the Commission's decision, and

(b) by summons served on the Chairman, or vice-Chairman, of the Commission stating the grounds and material facts on which the appellant relies.

(4) The Commission may, where an appeal under this paragraph has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and upon hearing the application the Court may –

(a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just,

and the provisions of this paragraph are without prejudice to the inherent powers of the Court or to any other rule of law empowering the Court to dismiss the appeal or the application for want of prosecution.

(5) On an appeal under this paragraph the Court may –

(a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(6) On an appeal under this paragraph against a decision described in subparagraph (1) 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 condition in question, or the variation or rescission thereof, pending the determination of the appeal.

(7) In this paragraph, **"the Court"** means the Royal Court constituted by the Bailiff sitting unaccompanied by the Jurats, and the Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto.

(8) An appeal from a decision of the Royal Court made under these Paragraph shall lie to the Court of Appeal on a question of law.

Offences as to false and misleading information.

10. If a person –

(a) in purported compliance with a requirement imposed by this Schedule, or

(b) otherwise than as mentioned in subparagraph (a) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by the person would or might be used by the Commission for the purpose of exercising its functions conferred by this Schedule,

does any of the following –

(i) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

the person is guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both or on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale or both.

Offences: general.

11. Any person who contravenes any requirement of this Schedule shall be guilty of an offence and liable –

(a) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both,

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the Uniform Scale or both.]

NOTES

Schedule 5 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1(12), Schedule 3, with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

In Schedule 5,

first, paragraph 1 was renumbered as paragraph 1(1) and the words in square brackets in that paragraph as so renumbered were inserted, second, paragraph 1(2) was inserted, third, paragraph 2(1A) and, fourth, paragraph 2(3A) were both inserted, fifth, paragraph 3(5) was substituted and paragraph 3(5A) inserted, sixth, the words in square brackets at the end of paragraph 3(7) were inserted, seventh, the words in square brackets in paragraph 3(2) were substituted, eighth, the words in square brackets in paragraph 3(3) were substituted, ninth, the words in square bracket in paragraph 3(4) were inserted, tenth, paragraph 3(5) was inserted, eleventh, the title to paragraph 5 was substituted, twelfth, the words in square brackets in paragraph 5(1) were inserted, thirteenth, paragraph 5(1A) was inserted, fourteenth, the words in square brackets in paragraph 5(2) were substituted, fifteenth, paragraphs 5(4) and (5) were inserted, sixteenth, the words in square brackets in paragraphs 7(1)(b) and (c) and paragraph 7(1A) were all inserted and, seventeenth, the words in square brackets in paragraph 9(1) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023, regulation 1(3), respectively paragraph (a), paragraph (b), paragraph (c)(i), paragraph (c)(ii), paragraph (c)(iii), paragraph (c)(iv), paragraph (d)(i), paragraph (d)(ii), paragraph (d)(iii), paragraph (d)(iv), paragraph (e)(i), paragraph (e)(ii), paragraph (e)(iii), paragraph (e)(iv), paragraph (e)(v), paragraph (f) and paragraph (g), with effect from 8th July, 2023 and, in accordance with the transitional provisions of regulation 2(1) of the (No. 2) Regulations, paragraph 11 of this Schedule did not apply to a paragraph 2(3A) business (as defined in regulation 2(2) thereof) until 1st October 2023;

first, the symbols and figures in square brackets in paragraph 2(3)(b) and, second, the words in square brackets in paragraph 2(3)(b)(i) were substituted and, third, paragraph 2(3)(b)(ii) was revoked by the

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Fees) (Amendment) Regulations, 2023, respectively regulation 1(a), regulation 1(b) and regulation 1(c), with effect from 1st January, 2024;[13]

first, the words in square brackets in paragraph 2(3)(a)(v) were inserted, second, paragraph 2(5B) and, third, paragraph 3A and paragraph 3B were inserted and, fourth, the word, parentheses, figure and letter in square brackets in paragraph 5 were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024, respectively section 1(2)(a), section 1(2)(b), section 1(3) and section 1(4), with effect from 24th April. 2024;

the words "supervisory Laws" in square brackets, wherever occurring, were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023, section 1(4), with effect from 16th October, 2023;

the words in square brackets in paragraph 2(6) were substituted by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2023, section 2(2), Schedule, paragraph 2(2), with effect from 7th July, 2023.

The functions, rights and liabilities of the States of Guernsey Policy and Resources Committee under paragraph 2(6) of this Schedule relating to the enactment of regulations or orders which prescribe or specify fees or other charges payable to the Guernsey Financial Services Commission (the "Commission") and ancillary matters were transferred to and vested in the Commission by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2023, section 1(a) and section 4(b), with effect from 7th July, 2023, subject to the savings and transitional provisions in section 3 of the 2023 Ordinance.

The following Regulations have been made under Schedule 5:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Fees) (Amendment) Regulations, 2022;

Financial Services Commission (Fees and Administrative Financial Penalties) Regulations, 2025.

The following Rules have been made under Schedule 5:

Financial Crime Returns Rules, 2025.

In accordance with the provisions of the Financial Services Commission (Fees and Administrative Financial Penalties) Regulations, 2025, regulation 8 and Schedule 7, with effect from 1st January, 2026, the registration fees to be paid by a prescribed business under paragraphs 2(3)(b) and 2(3A)(b) of this Schedule are set out in Schedule 7 to the 2025 Regulations, and pursuant to paragraph 2(6) of this Schedule, paragraph 2 of this Schedule is amended accordingly.[14]

The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 have since been revoked by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 2, with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

[SCHEDULE 6 Section 49AA(3A)

ADMINISTRATOR OF ESTATE AGENTS

The Administrator

Administrator of Estate Agents.

1. (1) There is established an office to be called the Administrator of Estate Agents.

(2) The holder of the office established under subparagraph (1) is referred to in this Schedule as the Administrator.

(3) The Administrator shall be the Registrar of Companies within the meaning of the Companies (Guernsey) Law, 2008, or such other person as the Committee may from time to time appoint by regulations; and a person appointed under regulations made under this subparagraph shall be appointed on such terms and conditions as may from time to time be agreed between the Committee and the person, provided that none of those terms and conditions is inconsistent with any provision of this Schedule.

(4) The purpose of establishing the office of Administrator of Estate Agents is –

(a) to prevent unfit persons from being persons involved in estate agency, and

(b) thereby to protect the interests of the people, and the reputation, of the Bailiwick,

and the Administrator must take account of these purposes when exercising his or her functions under this Schedule.

(5) In this Schedule a **"person involved in estate agency"** means a person who is either an estate agent, or a relevant person, within the meaning of this Schedule (and **"persons involved in estate agency"** shall be construed accordingly).

Functions of Administrator.

2. (1) In addition to functions conferred under other paragraphs of this Schedule, the functions of the Administrator are –

(a) to communicate and co-operate with –

(i) any authority appearing to the Administrator to exercise, in a place outside the Bailiwick, functions corresponding to the Administrator's, and

(ii) such other persons as he or she thinks fit,

for the purposes of assisting such authorities and persons and promoting, and enhancing the performance of, the Administrator's function, and such communication and co-operation may, without limitation, take the form of sharing any information which the Administrator may lawfully disclose, and

(b) to exercise such other functions as may be assigned or transferred to him or her by or under this Law or any other enactment.

(2) Subparagraph (1)(a) does not authorise the Administrator to disclose confidential information other than in accordance with paragraph 19.

Ancillary powers of Administrator.

3. (1) The Administrator has power to do anything that appears to the Administrator to be necessary or expedient for the purpose of exercising his or her functions including, without limitation, power –

(a) to require the production of such documents, accounts and information from such persons and within such periods and at such times and intervals as he or she thinks fit, including, but not limited to –

(i) persons involved in estate agency,

(ii) estate agency businesses,

(iii) the beneficial owners and legal owners of estate agency businesses,

(iv) the directors of estate agency businesses,

(v) the controllers of estate agency businesses, and

(vi) the managers of estate agency businesses,

(b) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents, and

(c) to request advice from Her Majesty's Procureur in relation to the exercise of any of his or her functions.

(2) The Administrator may also exercise the power at subparagraph (1)(a) for the purpose of enabling him or her (of the Administrator's own volition or at the request of the Committee or any other authority within the Bailiwick with functions in respect of financial crime) to obtain information relating to legal persons so that he or she can identify, assess and understand risks to the Bailiwick of money laundering, terrorist financing, the proliferation of weapons of mass destruction and all other forms of financial crime.

(3) For the avoidance of doubt (and without prejudice to any function conferred under any other enactment) the Administrator may –

(a) seek and receive information from any person, and

(b) take any such information into account in deciding whether and in what manner to exercise his or her functions.

Notification requirements

Initial notification requirement.

4. (1) Subject to subparagraph (2), a person ("**P**") or a person acting on P's behalf must notify the Administrator before P becomes a person involved in estate agency.

(2) Where, on the coming into force of this Schedule, a person ("**P**") is a person involved in estate agency, P, or a person acting on P's behalf, must notify the Administrator within 14 days of this Schedule coming into force.

(3) A person notifying the Administrator under subparagraph (1) or (2) must provide such information as the Administrator may specify in guidance that the Administrator causes to be published on the States of Guernsey website from

time to time, including, but not limited to, information relating to the minimum standards test.

(4) For the purposes of this Schedule, **"information relating to the minimum standards test"** means information relating to whether P is a fit person to be a person involved in estate agency, including certification by the notifying person as to whether P has at any time –

(a) been convicted of any offence (other than an offence which is spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002),

(b) engaged in any business practices which are, or which might reasonably be regarded as appearing to be, deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on the person's method of conducting business or the person's suitability to carry on estate agency, or

(c) engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her soundness of judgement.

(5) Without prejudice to the generality of subparagraph (4), and for the avoidance of doubt, when assessing whether a person is a fit person to be a person involved in estate agency for the purposes of this Schedule, regard shall be had to the person's probity, integrity, honesty and soundness of judgement.

Ongoing notification requirement.

5. A person involved in estate agency (**"P"**), or any other person who has

notified the Administrator under paragraph 4(1) or (2) and who continues to act on behalf of P for the purposes of this Schedule, must –

(a) provide the Administrator with information relating to the minimum standards test in respect of P within 21 days (or such other period as the Administrator may reasonably specify in all the circumstances) of being requested to do so, and

(b) notify the Administrator within 21 days after –

(i) P is convicted of any offence, or

(ii) any other change in respect of information previously provided to the Administrator,

and provide the Administrator with such information relating to that offence or change (as the case may be) as the Administrator may require.

Enforcement –estate agent disqualification orders

Estate agent disqualification orders.

6. (1) Without prejudice to any other powers of the Administrator, where in the opinion of the Administrator a person is not a fit person to be a person involved in estate agency, the Administrator may make and subsequently renew, on one or more occasions, an application to the Court for an order (an **"estate agent disqualification order"**) prohibiting that person from being a person involved in estate agency.

(2) An estate agent disqualification order may, in the Court's

absolute discretion, be made by consent.

(3) An estate agent disqualification order and any renewal thereof –

(a) shall have effect for such period (not exceeding 15 years), and

(b) may contain such ancillary, incidental and supplementary terms and conditions,

as shall be specified in it.

(4) Without prejudice to the generality of subparagraph (3) and for the avoidance of doubt, where the person who is the subject of an estate agency disqualification order is the beneficial owner of an estate agency business, an estate agent disqualification order may, for the purpose of (and only to the extent necessary for) giving effect to the prohibition referred to in subparagraph (1), contain terms and conditions requiring the person to divest himself or herself of such rights and interests in the estate agency business, within such period, as the Court may specify.

Grounds for making an estate agent disqualification order.

7. (1) The Court may make an estate agent disqualification order where it considers that, by reason of a person's conduct in relation to an estate agency or otherwise, that person is unfit to be a person involved in estate agency.

(2) Subject to subparagraph (3), in determining whether a person is unfit to be a person involved in estate agency, regard shall be had to the matters set out in subparagraphs 4(4)(a) –(c) and (5).

(3) For the avoidance of doubt, the Court may have regard to

matters other than those set out in the subparagraphs mentioned above in determining whether a person is unfit to be a person involved in estate agency.

Revocation of estate agent disqualification orders.

8. (1) A person subject to an estate agent disqualification order may apply to the Court for a revocation of the order on the ground that he or she is not unfit to be a person involved in estate agency, and the Court may grant the application if satisfied that –

(a) it would not be contrary to the public interest to do so, and

(b) the applicant is not unfit to be a person involved in estate agency.

(2) An application under this paragraph for the revocation of a disqualification order shall not be heard unless the person upon whose application the disqualification order was made has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may –

(a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit, and

(b) for that purpose adjourn the hearing of the application.

(3) The revocation of a disqualification order may, with the consent of the parties and in the Court's absolute discretion, be granted by consent.

Civil penalties.

9. (1) Where the Administrator is satisfied that –

(a) a person involved in estate agency is not unfit to be a person involved in estate agency but –

(i) has, without reasonable excuse, failed to comply with a requirement under paragraph 4 or 5, or

(ii) falls within paragraph 4(4)(a) –(c),

(b) a person involved in estate agency, or an estate agency business, has failed to comply with a condition imposed under paragraph 12, or

(c) any other person has, without reasonable excuse, failed to comply with –

(i) a requirement under paragraph 4 or 5, or

(ii) a request made by the Administrator to provide information (whether to the Administrator or another person) relevant to the exercise of the Administrator's functions,

the Administrator may (subject to the provisions of this paragraph and paragraph 13) [–]

[A.] impose on that person or business a

financial penalty in respect of the failure to comply that gave rise to the liability of such amount as the Administrator considers appropriate and proportionate, but not exceeding £20,000 or such other amount as the Committee may prescribe by regulations[,]

[B. publish the name of the person or business on whom the penalty is to be imposed, the amount of the penalty, and any ancillary, incidental and supplementary information as the Administrator considers appropriate and proportionate (together, **"publicise the penalty"**).]

[(2) In deciding whether to impose a penalty under this paragraph and, if so –

(a) the amount thereof, and

(b) whether to publicise the penalty,

the Administrator must take into consideration the following factors –]

[(i)] whether the failure was brought to the attention of the Administrator by the person concerned,

[(ii)] the seriousness of the failure,

[(iii)] whether or not the failure was inadvertent,

[(iv)] what efforts, if any, have been made to rectify the failure and to prevent a recurrence,

[(v)] the potential financial consequences to the person or business concerned, and to third parties including customers and creditors of that person, of imposing a penalty,

[(vi)] the penalties imposed by the Administrator under this paragraph in other cases, and

[(vii)] any other matter the Administrator considers relevant.

(3) Any financial penalty imposed under this paragraph is payable to the States and is recoverable as a civil debt.

(4) Where the Administrator proposes to impose a financial penalty, he or she must notify in writing the person or business on whom the penalty is to be imposed of –

(a) the proposed penalty, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to impose the penalty, which must not be less than 42 days after the date of the notice, and

[(ba) whether the Administrator intends to publicise the penalty (and, if so, what ancillary, incidental and supplementary information, if any, the Administrator

intends to publish), and]

(c) the right of that person or business to make written representations to the Administrator under paragraph 13(1).

(5) Where the Administrator imposes a financial penalty he or she must –

(a) issue to the person or business on whom the penalty is being imposed notice of the penalty, and

(b) include in the notice a statement of the right to apply to the Court under paragraph 15.

(6) ...

Private reprimands.

10. (1) Without prejudice to any other powers of the Administrator, where the Administrator considers that, having regard to the conduct of a person involved in estate agency, it is appropriate to do so, the Administrator may issue to the person a private reprimand.

(2) The Administrator may not publish a private reprimand without the consent of the person in question.

(3) A private reprimand issued under subparagraph (1) may be taken into account by the Administrator in considering any matter under this Schedule concerning the estate agent in question.

Public statements.

11. (1) Without prejudice to any other powers of the Administrator, where in the opinion of the Administrator a person involved in estate agency (**"P"**) has contravened in a material particular –

(i) a provision of this Schedule, or

(ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

the Administrator may publish, in such manner and for such period as the Administrator may determine, a statement to that effect.

(2) Where the Administrator proposes to publish a statement under this paragraph, he or she must notify in writing the person in respect of whom the statement is to be published of –

(a) the text of the proposed statement, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to publish the statement, which must not be less than 42 days after the date of the notice, and

(c) that person's right to make written representations to the Administrator under paragraph 13(1).

(3) A statement published under subparagraph (1) may contain such information in respect of any person named therein, and such ancillary,

incidental and supplementary information (including information as to any conditions imposed on the person under paragraph 12) as the Administrator may determine [to be appropriate and proportionate in the circumstances of the case, taking into account the purposes set out at paragraph 1(4)].

(4) In deciding whether or not to publish a statement under this paragraph and, if so, the terms thereof, the Administrator must take into consideration the following factors –

(a) whether the contravention was brought to the attention of the Administrator by P,

(b) the seriousness of the contravention,

(c) whether or not the contravention was inadvertent,

(d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,

(e) the potential financial consequences to P, and to third parties including customers and creditors of P, of publishing a statement,

(f) the action taken by the Administrator under this paragraph in other cases, and

(g) any other matter the Administrator considers relevant.

(5) If at any time it appears to the Administrator that a statement published under this paragraph or any information contained in it is or has become misleading, inaccurate or incomplete, or that it is necessary or desirable in the

interests of the public or the reputation of the Bailiwick to do so, the Administrator shall make such addition, erasure or other alteration to the statement or content thereof as the Administrator considers necessary.

[(5A) Where the Administrator proposes to make an addition, erasure or other alteration to a statement or content thereof under subparagraph (5), he or she must notify in writing the person in respect of whom the statement was published of –

(a) the text of the proposed addition, erasure or other alteration, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to publish the addition, erasure or other alteration which, unless the person concerned otherwise agrees, must not be less than 28 days after the date of the notice, and

(c) that person's right to make written representations to the Administrator under paragraph 13(1).]

(6) A statement published under subparagraph (1) may be taken into account by the Administrator in considering any matter under this Schedule concerning the estate agent in question.

Imposition of conditions.

12. (1) Without prejudice to any other powers of the Administrator, where the Administrator considers that, having regard to the conduct of a person involved in estate agency or an estate agency business, it is appropriate to do so, the Administrator may impose conditions on that person or business in respect of the person or business's conduct of estate agency.

(2) Where the Administrator proposes to impose conditions under this paragraph, he or she must notify in writing the person or business in respect of whom or which the conditions are to be imposed of –

(a) the conditions, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to impose the conditions, which must not be less than 42 days after the date of the notice,

(c) the duration of the conditions, and

(d) that right of that person or business to make written representations to the Administrator under paragraph 13(1).

Representations prior to civil penalty, etc.

13. (1) The person or business notified under paragraph 9(4), 11(2)[, 11(5A)] or 12(2) may make written representations to the Administrator concerning the [proposed financial penalty (including publicising the penalty), public statement, addition, erasure or other alteration or conditions (as the case may be) within 28 days of the date of the notice.]

(2) If the person or business in question exercises their right under subparagraph (1) the Administrator –

(a) must consider their representations, and

(b) may decide to –

(i) impose the penalty, [publicise the penalty,] publish the statement or impose the conditions,

(ii) in the case of a proposed financial penalty, impose a penalty in a lesser amount, [not publicise the penalty,] issue a private reprimand, publish a statement or impose conditions,

(iii) withdraw the penalty, not publish the statement or not impose the conditions, or

(iv) postpone the date for imposing the penalty, publishing the statement or imposing the conditions,

as the case may be, but in any event must inform that person or business of his or her decision in writing, and the reasons for the same, before the date on which the financial penalty is imposed or would otherwise have been imposed, the statement is published or would otherwise have been published, or the conditions are imposed or would otherwise have been imposed, as the case may be.

(3) For the avoidance of doubt, where the Administrator has imposed a financial penalty under paragraph 9 he or she may not seek to recover payment of that penalty until –

(a) 28 days immediately following the date of the notice of the penalty issued under paragraph 9(5)(a), or

(b) if an application to the Court is instituted within that period under paragraph 15, the final determination, or withdrawal, of that application,

and for the purposes of this subparagraph, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

Relationship of civil penalties with prosecutions.

14. (1) A person is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after a civil penalty has been paid, the Administrator shall repay the civil penalty.

General right to apply to Court to set aside action of Administrator.

15. (1) Without prejudice to any specific right of appeal in any enactment, a person who is directly affected by any action, direction, decision or determination of the Administrator (including an order imposing a financial penalty) may apply to the Court to set aside that action, direction, decision or determination.

(2) An application under subparagraph (1) shall be made in such manner (if any) as may be prescribed by order of the Court.

(3) On such an application the Court may make such order on such terms and conditions as it thinks fit.

(4) Subject to any direction given by the Court –

(a) the applicant shall give at least seven days' notice of the application to the Administrator,

(b) where the application is made in respect of a legal person and the applicant is not the legal person in respect of which the application is made, the applicant shall give at least seven days' notice of the application to the legal person, and

(c) the application shall be made within 21 days after the day of the action, direction, decision or determination of the Administrator.

(5) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(6) Section 21 of the Court of Appeal (Guernsey) Law, 1961 (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Enforcement: offences

Offences: general.

16. (1) A person who contravenes any provision of an estate agent disqualification order is guilty of an offence.

(2) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

False or misleading information.

17. (1) If a person to whom subparagraph (2) applies –

(a) makes a statement which the 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 the 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,

he or she is guilty of an offence.

(2) This subparagraph applies to a person (D) who –

(a) makes any statement or provides any information or document to the Administrator, or to any officer, servant or agent of the Administrator, when the Administrator or that person is acting in the exercise of his or her functions, or

(b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Administrator in circumstances in which D knows or could reasonably be expected to know that the statement, information or document would or might be used by the Administrator for the purpose of exercising his or her functions.

(3) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

Miscellaneous and Final

Disclosure and publication of non-confidential information.

18. Any information held by the Administrator, other than confidential information, may be disclosed or published by him or her –

(a) in accordance with the provisions of this Schedule, any other enactment or any rule of law, or

(b) if no such provision is made, in such manner, subject to such conditions and for such purposes as he or she thinks fit.

Disclosure and publication of confidential information.

19. [(1) Any confidential information held by the Administrator shall not be disclosed or published by the Administrator or by any officer, servant or agent of the Administrator except –

(a) with the consent of every individual who, and every body which, can be identified from that information,

(b) to the persons and bodies set out in subparagraph (2), where the Administrator considers that disclosure necessary and proportionate –

(i) for the purposes set out in paragraph 1(4), or

(ii) for the performance of the functions of the person or body,

(c) to any authority appearing to the Administrator to exercise, in a place outside the Bailiwick, functions corresponding to the Administrator's, where the Administrator considers that disclosure necessary and proportionate –

(i) for the purposes set out in paragraph 1(4), or

(ii) for the performance of the functions of the authority,

(d) (for the avoidance of doubt) in, or in response to, an application to the Court made under paragraph 6 or 8 (as the case may be),

(e) as provided for under paragraphs 9 to 12, or

(f) in accordance with any other enactment or any rule of law.]

(2) The persons and bodies referred to in subparagraph (1) are –

(a) the Commission,

(b) the Director of the Economic and Financial Crime Bureau,

[(ba) the Head of the Financial Intelligence Unit,]

(c) the Registrar of Companies (including in his or her capacity as the Registrar of Foundations),

(d) the Registrar of Limited Liability Partnerships,

(e) the Registrar within the meaning of the Companies (Alderney) Law, 1994,

(f) the Registrar of Beneficial Ownership,

(g) the Greffier,

(h) any body or person with the function of implementing or enforcing international sanctions measures within the Bailiwick,

(i) the Greffier within the meaning of the Government of Alderney Law, 2004,

(j) the Alderney Gambling Control Commission,

(k) the Director of the Revenue Service,

(l) the Registrar of Charities and other Non Profit Organisations under the Charities etc. (Guernsey and Alderney) Ordinance, 2021, and

(m) the Registrar of Non-Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010.

Exclusion of liability.

20. (1) No person undertaking a function under this Schedule is to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, after the coming into force of this Law in respect of that function, unless the thing was done or omitted to be done in bad faith.

(2) Subparagraph (1) does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

Service of notices and documents.

21. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Schedule may be given to or served upon –

(a) an individual ("**A**"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,

(b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to –

(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(d) an unincorporated body –

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with subparagraph (a), or

(ii) by being left at, or sent by post to –

(A) the body's principal or last known principal place of business in the Bailiwick, or

(B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(e) the Administrator, by being left at, or sent by post to, his or her principal office in the Bailiwick, or by being transmitted to his or her electronic address,

and in this paragraph –

(i) **"by post"** means by special delivery, recorded or signed for delivery or ordinary letter post,

(ii) **"electronic address"** includes, without limitation, an e-mail address and telecommunications address,

(iii) **"relevant electronic address"** means an electronic address –

(A) with which, in the opinion of the Administrator, the person concerned has a personal, business or other connection, and

(B) a document transmitted to which is likely to come to the attention of the person concerned,

(iv) **"transmitted"** means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication, and

(v) **"summons"** includes any document compelling a person's attendance before the court.

(2) Subparagraph (1) is without prejudice to any other lawful method of service.

(3) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Schedule to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a business day.

(4) Service of any document sent by post shall be proved by

showing the date of posting, the address thereon and the fact of prepayment.

(5) A document shall be deemed for the purposes of this Schedule to have been –

(a) addressed to the person concerned, and

(b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this section, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

[**Legal professional privilege and protection from self-incrimination unaffected.**

21A. For the avoidance of doubt, nothing in this Schedule limits a right to decline to produce or deliver documents or other information to the Administrator on the ground of –

(a) legal professional privilege, or

(b) any rule against self-incrimination.]

Interpretation.

22. [(1)] In this Schedule –

"beneficial owner" has the meaning given in paragraph 22 of Schedule 3, subject to the following modification: wherever "25%" appears, there is substituted "15%",

"confidential information" means –

(a) an individual's usual residential address, [...]

[(b) the identity of any person whom the Administrator has been notified is the beneficial owner of an estate agency business,] [and]

[(c) any other information from which an individual or body can be identified which is acquired by the Administrator in the course of carrying out his or her functions,]

"the Court" means the Royal Court sitting as an Ordinary Court,

"estate agency" has the meaning given in paragraph 3 of Schedule 2, but does not include acting in the course of a business in circumstances where that business is a small business within the meaning of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,

"estate agency business" means a business engaged in estate agency (and, for the avoidance of doubt, consequently does not include a small business within the meaning of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008),

"estate agent" means a person engaged in estate agency who is not a relevant person,

"estate agent disqualification order": see paragraph 6(1),

"information relating to the minimum standards test": see

paragraph 4(4),

"person involved in estate agency": see paragraph 1(5), and

"relevant person": see paragraph 23.

[(2) The Committee may make regulations amending the definition of **"confidential information"** in subparagraph (1).

(3) Regulations made under subparagraph (2) shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.]

Meaning of relevant person.

23. In this Schedule a **"relevant person"** means –

(a) a person participating (directly or indirectly) in the management of an estate agency business, or

(b) the beneficial owner of an estate agency business.]

NOTES

Schedule 6 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2022, section 1(3), Schedule, with effect from 3rd January, 2023.

In Schedule 6,

first, the symbol in the first pair of square brackets in paragraph 9(1) was inserted, the text immediately thereafter was re-lettered as item "A", the punctuation in square brackets at the end of item "A as so re-lettered was substituted and item "B" of that paragraph was inserted, second, the words

in the first pair of square brackets in paragraph 9(2) were substituted and items (i) to (vii) therein were renumbered, third, paragraph 9(4)(ba) was inserted, fourth, paragraph 9(6) was repealed, fifth, the words in square brackets in paragraph 11(3) were inserted, sixth, paragraph 11(5A) was inserted, seventh, the punctuation, figures, parentheses and letter in the first pair of square brackets in paragraph 13(1) were inserted and the words in the second pair of square bracket therein were substituted, eighth, the words in square brackets in paragraph 13(2)(b)(i) and in paragraph 13(2)(b)(ii) were inserted, ninth, paragraph 19(1) was substituted and paragraph 19(2)(ba) was inserted, tenth, paragraph 21A was inserted and, eleventh, in the definition of the expression "confidential information" in paragraph 22(1), the word omitted in square brackets at the end of paragraph (a) thereof was repealed, and the word in square brackets at the end of paragraph (b) and paragraph (c) of that definition were both inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2023, respectively section 2(2), section 2(3), section 2(4), section 2(5), section 2(6), section 2(7), section 2(8), section 2(9), section 2(10), section 2(11) and section 2(12), with effect from 20th October, 2023;[15]

paragraph 22 was renumbered as paragraph 22(1), paragraph (b) of the definition of the expression "confidential information" therein was substituted and subparagraphs (2) and (3) of paragraph 22 were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(4), with effect from 25th August, 2023.

[SCHEDULE 7 Section 49AA(3B)

ADMINISTRATOR OF ACCOUNTANTS

The Administrator

Administrator of Accountants.

1. (1) There is established an office to be called the Administrator of Accountants.

(2) The holder of the office established under subparagraph (1) is referred to in this Schedule as the Administrator.

(3) The Administrator shall be the Registrar of Companies within the meaning of the Companies (Guernsey) Law, 2008, or such other person as the Committee may from time to time appoint by regulations; and a person appointed under regulations made under this subparagraph shall be appointed on such terms and conditions as may from time to time be agreed between the Committee and the person, provided that none of those terms and conditions is inconsistent with any provision of this Schedule.

(4) The purpose of establishing the office of Administrator of Accountants is –

(a) to prevent unfit persons from being persons involved in accountancy, and

(b) thereby to protect the interests of the people, and the reputation, of the Bailiwick,

and the Administrator must take account of these purposes when exercising his or her functions under this Schedule.

(5) In this Schedule, subject to paragraph 23 a **"person involved in accountancy"** means a person who is either an accountant, or a relevant person, within the meaning of this Schedule (and **"persons involved in accountancy"** shall be construed accordingly).

Functions of Administrator.

2. (1) In addition to functions conferred under other paragraphs of this Schedule, the functions of the Administrator are –

(a) to communicate and co-operate with –

(i) any authority appearing to the Administrator to exercise, in a place outside the Bailiwick, functions corresponding to the Administrator's, and

(ii) such other persons as he or she thinks fit,

for the purposes of assisting such authorities and persons and promoting, and enhancing the performance of, the Administrator's function, and such communication and co-operation may, without limitation, take the form of sharing any information which the Administrator may lawfully disclose, and

(b) to exercise such other functions as may be assigned or transferred to him or her by or under this Law or any other enactment.

(2) Subparagraph (1)(a) does not authorise the Administrator to disclose confidential information other than in accordance with paragraph 19.

Ancillary powers of Administrator.

3. (1) The Administrator has power to do anything that appears to the Administrator to be necessary or expedient for the purpose of exercising his or her functions including, without limitation, power –

(a) to require the production of such documents, accounts and information from such persons and within such periods and at such times and intervals as he or she thinks fit, including, but not limited to –

(i) persons involved in accountancy,

(ii) accountancy businesses,

(iii) the beneficial owners and legal owners of accountancy businesses,

(iv) the directors of accountancy businesses,

(v) the partners of accountancy businesses,

(vi) the controllers of accountancy businesses, and

(vii) the managers of accountancy businesses,

(b) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents, and

(c) to request advice from His Majesty's Procureur in relation to the exercise of any of his or her functions.

(2) The Administrator may also exercise the power at subparagraph (1)(a) for the purpose of enabling him or her (of the Administrator's own volition or at the request of the Committee or any other authority within the Bailiwick with functions in respect of financial crime) to obtain information relating to legal persons so that he or she can identify, assess and understand risks to the Bailiwick of money laundering, terrorist financing, the proliferation of weapons of mass destruction and all other forms of financial crime.

(3) For the avoidance of doubt (and without prejudice to any function conferred under any other enactment) the Administrator may –

(a) seek and receive information from any person, and

(b) take any such information into account in deciding whether and in what manner to exercise his or her functions.

Notification requirements

Initial notification requirement.

4. (1) Subject to subparagraph (2), a person (**"P"**) or a person or body acting on P's behalf must notify the Administrator before P becomes a person involved in accountancy.

(2) Where, on the coming into force of this Schedule, a person ("**P**") is a person involved in accountancy, P, or a person or body acting on P's behalf, must notify the Administrator within 14 days of this Schedule coming into force.

(3) A person or body notifying the Administrator under subparagraph (1) or (2) must provide such information as the Administrator may specify in guidance that the Administrator causes to be published on the States of Guernsey website from time to time, including, but not limited to, information relating to the minimum standards test.

(4) For the purposes of this Schedule, "**information relating to the minimum standards test**" means information relating to whether P is a fit person to be a person involved in accountancy, including certification by the notifying person or body as to whether P has at any time –

(a) been convicted of any offence, other than an offence which –

(i) is spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, or

(ii) falls within a category specified in regulations made for this purpose by the Committee,

(b) engaged in any business practices which are, or which might reasonably be regarded as appearing to be, deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on

the person's method of conducting business or the person's suitability to carry on accountancy, or

(c) engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her soundness of judgement.

(5) Without prejudice to the generality of subparagraph (4), and for the avoidance of doubt, when assessing whether a person is a fit person to be a person involved in accountancy for the purposes of this Schedule, regard shall be had to the person's probity, integrity, honesty and soundness of judgement.

(6) For the avoidance of doubt, an accountancy business employing P or otherwise paying P for professional services, or of which P is a partner, may be a notifying person or body (as the case may be) for the purposes of this paragraph and paragraph 5, and this Schedule shall be construed accordingly.

Ongoing notification requirement.

5. A person involved in accountancy (**"P"**), or any other person or body who has notified the Administrator under paragraph 4(1) or (2) and who continues to act on behalf of P for the purposes of this Schedule, must –

(a) provide the Administrator with information relating to the minimum standards test in respect of P within 21 days (or such other period as the Administrator may reasonably specify in all the circumstances) of being requested to do so, and

(b) notify the Administrator within 21 days after –

(i) P is convicted of any offence, or

(ii) any other change in respect of information previously provided to the Administrator,

and provide the Administrator with such information relating to that offence or change (as the case may be) as the Administrator may require.

Enforcement –Accountant disqualification orders

Accountant disqualification orders.

6. (1) Without prejudice to any other powers of the Administrator, where in the opinion of the Administrator a person is not a fit person to be a person involved in accountancy, the Administrator may make and subsequently renew, on one or more occasions, an application to the Court for an order (an **"accountant disqualification order"**) prohibiting that person from being a person involved in accountancy.

(2) An accountant disqualification order may, in the Court's absolute discretion, be made by consent.

(3) An accountant disqualification order and any renewal thereof –

(a) shall have effect for such period (not exceeding 15 years), and

(b) may contain such ancillary, incidental and supplementary terms and conditions,

as shall be specified in it.

(4) Without prejudice to the generality of subparagraph (3) and for the avoidance of doubt, where the person who is the subject of an accountancy disqualification order is the beneficial owner of an accountancy business, an accountant disqualification order may, for the purpose of (and only to the extent necessary for) giving effect to the prohibition referred to in subparagraph (1), contain terms and conditions requiring the person to divest himself or herself of such rights and interests in the accountancy business, within such period, as the Court may specify.

Grounds for making an accountant disqualification order.

7. (1) The Court may make an accountant disqualification order where it considers that, by reason of a person's conduct in relation to an accountancy business or otherwise, that person is unfit to be a person involved in accountancy.

(2) Subject to subparagraph (3), in determining whether a person is unfit to be a person involved in accountancy, regard shall be had to the matters set out in subparagraphs 4(4)(a) –(c) and (5).

(3) For the avoidance of doubt, the Court may have regard to matters other than those set out in the subparagraphs mentioned above in determining whether a person is unfit to be a person involved in accountancy.

Revocation of accountant disqualification orders.

8. (1) A person subject to an accountant disqualification order may apply to the Court for a revocation of the order on the ground that he or she is not unfit to be a person involved in accountancy, and the Court may grant the application if satisfied that –

(a) it would not be contrary to the public interest to do so, and

(b) the applicant is not unfit to be a person involved in accountancy.

(2) An application under this paragraph for the revocation of a disqualification order shall not be heard unless the Administrator has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may –

(a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit, and

(b) for that purpose adjourn the hearing of the application.

(3) The revocation of a disqualification order may, with the consent of the parties and in the Court's absolute discretion, be granted by consent.

Enforcement –other civil sanctions

Civil penalties.

9. (1) Where the Administrator is satisfied that –

(a) a person involved in accountancy is not unfit to be a person involved in accountancy but –

(i) has, without reasonable excuse, failed to comply with a requirement under paragraph 4 or 5, or

(ii) falls within paragraph 4(4)(a) –(c),

(b) a person involved in accountancy, or an accountancy business, has failed to comply with a condition imposed under paragraph 12, or

(c) any other person or body has, without reasonable excuse, failed to comply with –

(i) a requirement under paragraph 4 or 5, or

(ii) a request made by the Administrator to provide information (whether to the Administrator or another person) relevant to the exercise of the Administrator's functions,

the Administrator may (subject to the provisions of this paragraph and paragraph 13) [–]

[A.] impose on that person or business a financial penalty in respect of the failure to comply that gave rise to the liability of such amount as the Administrator considers appropriate and proportionate, but not exceeding £20,000 or such other amount as the Committee may prescribe by regulations[,]

[B. publish the name of the person or business on whom the penalty is to be imposed, the amount of the penalty, and any ancillary, incidental and

supplementary information as the Administrator considers appropriate and proportionate (together, **"publicise the penalty"**).]

[(2) In deciding whether to impose a penalty under this paragraph and, if so –

(a) the amount thereof, and

(b) whether to publicise the penalty,

the Administrator must take into consideration the following factors –]

[(i)] whether the failure was brought to the attention of the Administrator by the person concerned,

[(ii)] the seriousness of the failure,

[(iii)] whether or not the failure was inadvertent,

[(iv)] what efforts, if any, have been made to rectify the failure and to prevent a recurrence,

[(v)] the potential financial consequences to the person or business concerned, and to third parties including customers and creditors of that person, of imposing a penalty,

[(vi)] the penalties imposed by the Administrator under this paragraph in other cases, and

[(vii)] any other matter the Administrator considers relevant.

(3) Any financial penalty imposed under this paragraph is payable to the States and is recoverable as a civil debt.

(4) Where the Administrator proposes to impose a financial penalty, he or she must notify in writing the person or business on whom the penalty is to be imposed of –

(a) the proposed penalty, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to impose the penalty, which must not be less than 42 days after the date of the notice, and

[(ba) whether the Administrator intends to publicise the penalty (and, if so, what ancillary, incidental and supplementary information, if any, the Administrator intends to publish), and]

(c) the right of that person or business to make written representations to the Administrator under paragraph 13(1).

(5) Where the Administrator imposes a financial penalty he or she must –

(a) issue to the person or business on whom the penalty is being imposed notice of the penalty, and

(b) include in the notice a statement of the right to apply to the Court under paragraph 15.

(6) ...

Private reprimands.

10. (1) Without prejudice to any other powers of the Administrator, where the Administrator considers that, having regard to the conduct of a person involved in accountancy, it is appropriate to do so, the Administrator may issue to the person a private reprimand.

(2) The Administrator may not publish a private reprimand without the consent of the person in question.

(3) A private reprimand issued under subparagraph (1) may be taken into account by the Administrator in considering any matter under this Schedule concerning the person in question.

Public statements.

11. (1) Without prejudice to any other powers of the Administrator, where in the opinion of the Administrator a person involved in accountancy (**"P"**) has contravened in a material particular –

(i) a provision of this Schedule, or

(ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

it may publish, in such manner and for such period as the Administrator may determine, a statement to that effect.

(2) Where the Administrator proposes to publish a statement under this paragraph, he or she must notify in writing the person in respect of whom the statement is to be published of –

(a) the text of the proposed statement, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to publish the statement, which must not be less than 42 days after the date of the notice, and

(c) that person's right to make written representations to the Administrator under paragraph 13(1).

(3) A statement published under subparagraph (1) may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information (including information as to any conditions imposed on the person under paragraph 12) as the Administrator may determine [to be appropriate and proportionate in the circumstances of the case, taking into account the purposes set out at paragraph 1(4)].

(4) In deciding whether or not to publish a statement under this paragraph and, if so, the terms thereof, the Administrator must take into consideration the following factors –

(a) whether the contravention was brought to the attention of the Administrator by P,

(b) the seriousness of the contravention,

(c) whether or not the contravention was inadvertent,

(d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,

(e) the potential financial consequences to P, and to third parties including customers and creditors of P, of publishing a statement,

(f) the action taken by the Administrator under this paragraph in other cases, and

(g) any other matter the Administrator considers relevant.

(5) If at any time it appears to the Administrator that a statement published under this paragraph or any information contained in it is or has become misleading, inaccurate or incomplete, or that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick to do so, the Administrator shall make such addition, erasure or other alteration to the statement or content thereof as the Administrator considers necessary.

[(5A) Where the Administrator proposes to make an addition, erasure or other alteration to a statement or content thereof under subparagraph (5), he or she must notify in writing the person in respect of whom the statement was published of –

(a) the text of the proposed addition, erasure or other alteration, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to publish the addition, erasure or other alteration which, unless the person concerned otherwise agrees, must not be less than 28 days after the date of the notice, and

(c) that person's right to make written representations to the Administrator under paragraph 13(1).]

(6) A statement published under subparagraph (1) may be taken into account by the Administrator in considering any matter under this Schedule concerning the person in question.

Imposition of conditions.

12. (1) Without prejudice to any other powers of the Administrator, where the Administrator considers that, having regard to the conduct of a person involved in accountancy or an accountancy business, it is appropriate to do so, the Administrator may impose conditions on that person or business in respect of the person or business's conduct of accountancy.

(2) Where the Administrator proposes to impose conditions under this paragraph, he or she must notify in writing the person or business in respect of whom or which the conditions are to be imposed of –

(a) the conditions, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to impose the conditions, which must not be less than 42 days after the date of the notice,

(c) the duration of the conditions, and

(d) that right of that person or business to make written representations to the Administrator under paragraph 13(1).

Representations prior to civil penalty, etc.

13. (1) The person or business notified under paragraph 9(4), 11(2)[, 11(5A),] or 12(2) may make written representations to the Administrator concerning the [proposed financial penalty (including publicising the penalty), public statement, addition, erasure or other alteration or conditions (as the case may be) within 28 days of the date of the notice.]

(2) If the person or business in question exercises their right under subparagraph (1) the Administrator –

(a) must consider their representations, and

(b) may decide to –

(i) impose the penalty, [publicise the penalty,] publish the statement or impose the conditions,

(ii) in the case of a proposed financial penalty, impose a penalty in a lesser amount, [not publicise the penalty,] issue a private reprimand, publish a statement or impose conditions,

(iii) withdraw the penalty, not publish the statement or not impose the conditions, or

(iv) postpone the date for imposing the penalty, publishing the statement or imposing the conditions,

as the case may be, but in any event must inform that person or business of his or her decision in writing, and the reasons for the same, before the date on which the financial penalty is imposed or would otherwise have been imposed, the statement is published or would otherwise have been published, or the conditions are imposed or would otherwise have been imposed, as the case may be.

(3) For the avoidance of doubt, where the Administrator has imposed a financial penalty under paragraph 9 he or she may not seek to recover payment of that penalty until –

(a) 28 days immediately following the date of the notice of the penalty issued under paragraph 9(5)(a), or

(b) if an application to the Court is instituted within that period under paragraph 15, the final determination, or withdrawal, of that application,

and for the purposes of this subparagraph, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

Relationship of civil penalties with prosecutions.

14. (1) A person is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after a civil penalty has been paid, the Administrator shall repay the civil penalty.

General right to apply to Court to set aside action of Administrator.

15. (1) Without prejudice to any specific right of appeal in any enactment, a person who is directly affected by any action, direction, decision or determination of the Administrator (including an order imposing a financial penalty) may apply to the Court to set aside that action, direction, decision or determination.

(2) An application under subparagraph (1) shall be made in such manner (if any) as may be prescribed by order of the Court.

(3) On such an application the Court may make such order on such terms and conditions as it thinks fit.

(4) Subject to any direction given by the Court –

(a) the applicant shall give at least seven days' notice of the application to the Administrator,

(b) where the application is made in respect of a legal person and the applicant is not the legal person in respect of which the application is made, the applicant shall give at least seven days' notice of the application to the legal person, and

(c) the application shall be made within 21 days after the day of the action, direction, decision or determination of the Administrator.

(5) An appeal from an order of the Court under this paragraph lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(6) Section 21 of the Court of Appeal (Guernsey) Law, 1961 (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this paragraph as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Enforcement: offences

Offences: general.

16. (1) A person who contravenes any provision of an accountant disqualification order is guilty of an offence.

(2) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

False or misleading information.

17. (1) If a person to whom subparagraph (2) applies –

(a) makes a statement which the 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 the 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,

he or she is guilty of an offence.

(2) This subparagraph applies to a person (D) who –

(a) makes any statement or provides any information or document to the Administrator, or to any officer, servant or agent of the Administrator, when the Administrator or that person is acting in the exercise of his or her functions, or

(b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Administrator in circumstances in which D knows or could reasonably be expected to know that the statement, information or document would or might be used by the Administrator for the purpose of exercising his or her functions.

(3) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

Miscellaneous and Final

Disclosure and publication of non-confidential information.

18. Any information held by the Administrator, other than confidential information, may be disclosed or published by him or her –

(a) in accordance with the provisions of this Schedule, any other enactment or any rule of law, or

(b) if no such provision is made, in such manner, subject to such conditions and for such purposes as he or she thinks fit.

Disclosure and publication of confidential information.

19. [(1) Any confidential information held by the Administrator shall not be disclosed or published by the Administrator or by any officer, servant or agent of the Administrator except –

(a) with the consent of every individual who, and every body which, can be identified from that information,

(b) to the persons and bodies set out in subparagraph (2), where the Administrator considers that disclosure necessary and proportionate –

(i) for the purposes set out in paragraph 1(4), or

(ii) for the performance of the functions of the person or body,

(c) to any authority appearing to the Administrator to exercise, in a place outside the Bailiwick, functions corresponding to the Administrator's, where the Administrator considers that disclosure necessary and proportionate –

(i) for the purposes set out in paragraph 1(4), or

(ii) for the performance of the functions of the authority,

(d) (for the avoidance of doubt) in, or in response to, an application to the Court made under paragraph 6 or 8 (as the case may be),

(e) as provided for under paragraphs 9 to 12, or

(f) in accordance with any other enactment or any rule of law.]

(2) The persons and bodies referred to in subparagraph (1) are –

(a) the Commission,

(b) the Director of the Economic and Financial Crime Bureau,

[(ba) the Head of the Financial Intelligence Unit,]

(c) the Registrar of Companies (including in his or her capacity as the Registrar of Foundations),

(d) the Registrar of Limited Liability Partnerships,

(e) the Registrar within the meaning of the Companies (Alderney) Law, 1994,

(f) the Registrar of Beneficial Ownership,

(g) the Greffier,

(h) any body or person with the function of implementing or enforcing international sanctions measures within the Bailiwick,

(i) the Greffier within the meaning of the Government of Alderney Law, 2004,

(j) the Alderney Gambling Control Commission,

(k) the Director of the Revenue Service,

(l) the Registrar of Charities and other Non Profit Organisations under the Charities etc. (Guernsey and Alderney) Ordinance, 2021, and

(m) the Registrar of Non-Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010.

Exclusion of liability.

20. (1) No person undertaking a function under this Schedule is to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, after the coming into force of this Law in respect of that function, unless the thing was done or omitted to be done in bad faith.

(2) Subparagraph (1) does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

Service of notices and documents.

21. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Schedule may be given to or served upon –

(a) an individual ("**A**"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,

(b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to –

(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(d) an unincorporated body –

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with subparagraph (a), or

(ii) by being left at, or sent by post to –

(A) the body's principal or last known principal place of business in the Bailiwick, or

(B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(e) the Administrator, by being left at, or sent by post to, his or her principal office in the Bailiwick, or by being transmitted to his or her electronic address,

and in this paragraph –

(i) **"by post"** means by special delivery, recorded or signed for delivery or ordinary letter post,

(ii) **"electronic address"** includes, without limitation, an e-mail address and telecommunications address,

(iii) **"relevant electronic address"** means an electronic address –

(A) with which, in the opinion of the Administrator, the person concerned has a personal, business or other connection, and

(B) a document transmitted to which is likely to come to the attention of the person concerned,

(iv) **"transmitted"** means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication, and

(v) **"summons"** includes any document compelling a person's attendance before the court.

(2) Subparagraph (1) is without prejudice to any other lawful method of service.

(3) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Schedule to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a business day.

(4) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(5) A document shall be deemed for the purposes of this Schedule to have been –

(a) addressed to the person concerned, and

(b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this paragraph, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

Power of Committee to make regulations in respect of qualification requirements.

22. (1) The Committee may make regulations making provision in respect of the professional qualification of accountants.

(2) Regulations made under this paragraph shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark; but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.

Equivalent jurisdictions.

23. (1) A person is not a person involved in accountancy for the purposes of this Schedule in circumstances where the person –

(a) is subject to requirements imposed by a jurisdiction outside the Bailiwick which the Committee is satisfied are equivalent to the requirements imposed by this Schedule, and

(b) undertakes accountancy primarily from or within a jurisdiction outside the Bailiwick,

and the Committee may make regulations specifying jurisdictions which it is satisfied impose equivalent requirements for the purpose of item (a).

(2) Regulations made under this paragraph shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark; but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.

[**Legal professional privilege and protection from self-incrimination unaffected.**

23A. For the avoidance of doubt, nothing in this Schedule limits a right to decline to produce or deliver documents or other information to the Administrator on the ground of –

(a) legal professional privilege, or

(b) any rule against self-incrimination.]

Interpretation.

24. (1) In this Schedule –

"accountancy" means the business of being an auditor, external accountant, insolvency practitioner or tax adviser within the meaning given in paragraph 5 of Schedule 2, but does not include such a business in circumstances where that business is a small business within the meaning of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,

"accountancy business" means a business engaged in accountancy that carries on, or holds itself out as carrying on, business in, or from within, the Bailiwick (and, for the avoidance of doubt, consequently does not include a small business within the meaning of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008),

"accountant": see paragraph 25,

"accountant disqualification order": see paragraph 6(1),

"beneficial owner" has the meaning given in paragraph 22 of Schedule 3, subject to the following modification: wherever "25%" appears, there is substituted "15%",

"confidential information" means –

(a) an individual's usual residential address, [...]

(b) the identity of any person whom the Administrator has been notified is the beneficial owner of an accountancy business, [and]

[(c) any other information from which an individual or body can be identified which is acquired by the Administrator in the course of carrying out his or her functions,]

"the Court" means the Royal Court sitting as an Ordinary Court,

"information relating to the minimum standards test": see paragraph 4(4),

"person involved in accountancy": see paragraph 1(5), and

"relevant person" means the beneficial owner of an accountancy business[, but does not include the beneficial owner of an accountancy business where that accountancy business is a legal person or legal arrangement incorporated or established (as the case may be) in a jurisdiction

outside the Bailiwick, unless that legal person or legal arrangement undertakes accountancy primarily from or within the Bailiwick].

(2) The Committee may make regulations amending the definition of "**confidential information**" in subparagraph (1).

(3) Regulations made under subparagraph (2) shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.

Meaning of accountant.

25. (1) In this Schedule an **"accountant"** means an individual who is –

(a) a partner, chief executive or director (or equivalent to any of these roles) of an accountancy business or any other person participating in, or being in any way concerned (directly or indirectly) in the management of an accountancy business, where that person also has the authority to bind that accountancy business in the Bailiwick, or

(b) a Money Laundering Reporting Officer, a Money Laundering Compliance Officer or a nominated officer of an accountancy business,

and in this paragraph **"Money Laundering Reporting Officer"**, **"Money Laundering Compliance Officer"** and **"nominated officer"** have the meanings given in Schedule 3.

(2) The Committee may make regulations amending the definition of **"accountant"** in subparagraph (1).

(3) Regulations made under subparagraph (2) shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.]

NOTES

Schedule 7 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(5), Schedule, with effect from 25th August, 2023.

In Schedule 7,

first, the symbol in the first pair of square brackets in paragraph 9(1) was inserted, the text immediately thereafter was re-lettered as item "A", the punctuation in square brackets at the end of item "A as so re-lettered was substituted and item "B" of that paragraph was inserted, second, the words in the first pair of square brackets in paragraph 9(2) were substituted and items (i) to (vii) therein were renumbered, third, paragraph 9(4)(ba) was inserted, fourth, paragraph 9(6) was repealed, fifth, the words in square brackets in paragraph 11(3) were inserted, sixth, paragraph 11(5A) was inserted, seventh, the punctuation, figures, parentheses and letter in the first pair of square brackets in paragraph 13(1) were inserted and the words in the second pair of square bracket therein were substituted, eighth, the words in square brackets in paragraph 13(2)(b)(i) and in paragraph 13(2)(b)(ii) were inserted, ninth, paragraph 19(1) was substituted and paragraph 19(2)(ba) was inserted, tenth, paragraph 23A was inserted and, eleventh, in the definition of the expression "confidential information" in paragraph 22(1), the word omitted in square brackets at the end of paragraph (a) thereof was repealed, and the word in square brackets at the end of paragraph (b) and paragraph (c) of that definition were both inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2023, respectively section 3(2), section 3(3), section 3(4), section 3(5), section 3(6), section 3(7), section 3(8), section 3(9), section 3(10), section 3(11) and section 3(12), with effect from 20th October, 2023;

the words in square brackets in the definition of the expression "relevant person" in paragraph 24(1) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Equivalent Jurisdictions) (Amendment) Regulations, 2023, regulation 2, with effect from 25th August,

2023.

The following Regulations have been made under Schedule 7:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Equivalent Jurisdictions) Regulations, 2023;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Equivalent Jurisdictions) (Amendment) Regulations, 2023;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Professional Qualifications – Accountants and Non-Locally Qualified Legal Professionals) Regulations, 2024.

[SCHEDULE 8 Section 49AA(3C)

ADMINISTRATOR OF NON-LOCALLY QUALIFIED LEGAL PROFESSIONALS

The Administrator

Administrator of non-locally qualified legal professionals.

1. (1) There is established an office to be called the Administrator of non-locally qualified legal professionals.

(2) The holder of the office established under subparagraph (1) is referred to in this Schedule as the Administrator.

(3) The Administrator shall be the Registrar of Companies within the meaning of the Companies (Guernsey) Law, 2008, or such other person as the Committee may from time to time appoint by regulations; and a person appointed under regulations made under this subparagraph shall be appointed on such terms and conditions as may from time to time be agreed between the Committee and the person, provided that none of those terms and conditions is inconsistent with any provision of this Schedule.

(4) The purpose of establishing the office of Administrator of non-locally qualified legal professionals is –

(a) to prevent unfit persons from being specified legal service persons, and

(b) thereby to protect the interests of the people, and the reputation, of the Bailiwick,

and the Administrator must take account of these purposes when exercising his or her

functions under this Schedule.

(5) In this Schedule, a **"specified legal services person"** means a person who is either a non-locally qualified legal professional, or a relevant person, within the meaning of this Schedule (and **"specified legal services persons"** shall be construed accordingly).

Functions of Administrator.

2. (1) In addition to functions conferred under other paragraphs of this Schedule, the functions of the Administrator are –

(a) to communicate and co-operate with –

(i) any authority appearing to the Administrator to exercise, in a place outside the Bailiwick, functions corresponding to the Administrator's, and

(ii) such other persons as he or she thinks fit,

for the purposes of assisting such authorities and persons and promoting, and enhancing the performance of, the Administrator's function, and such communication and co-operation may, without limitation, take the form of sharing any information which the Administrator may lawfully disclose, and

(b) to exercise such other functions as may be assigned or transferred to him or her by or under this Law or any other enactment.

(2) Subparagraph (1)(a) does not authorise the Administrator to disclose confidential information other than in accordance with paragraph 19.

Ancillary powers of Administrator.

3. (1) The Administrator has power to do anything that appears to the Administrator to be necessary or expedient for the purpose of exercising his or her functions including, without limitation, power –

(a) to require the production of such documents, accounts and information from such persons and within such periods and at such times and intervals as he or she thinks fit, including, but not limited to –

(i) specified legal services persons,

(ii) non-local legal services businesses,

(iii) the beneficial owners and legal owners of non-local legal services businesses,

(iv) the directors of non-local legal services businesses,

(v) the partners of non-local legal services businesses,

(vi) the controllers of non-local legal services businesses, and

(vii) the managers of non-local legal services businesses,

(b) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents, and

(c) to request advice from His Majesty's Procureur in relation to the exercise of any of his or her functions.

(2) The Administrator may also exercise the power at subparagraph (1)(a) for the purpose of enabling him or her (of the Administrator's own volition or at the request of the Committee or any other authority within the Bailiwick with functions in respect of financial crime) to obtain information relating to legal persons so that he or she can identify, assess and understand risks to the Bailiwick of money laundering, terrorist financing, the proliferation of weapons of mass destruction and all other forms of financial crime.

(3) For the avoidance of doubt (and without prejudice to any function conferred under any other enactment) the Administrator may –

(a) seek and receive information from any person, and

(b) take any such information into account in deciding whether and in what manner to exercise his or her functions.

Notification requirements

Initial notification requirement.

4. (1) Subject to subparagraph (2), a person (**"P"**) or a person or body acting on P's behalf must notify the Administrator before P becomes a specified legal services person.

(2) Where, on the coming into force of this Schedule, a person ("**P**") is a specified legal services person, P, or a person or body acting on P's behalf, must notify the Administrator within 14 days of this Schedule coming into force.

(3) A person or body notifying the Administrator under subparagraph (1) or (2) must provide such information as the Administrator may specify in guidance that the Administrator causes to be published on the States of Guernsey website from time to time, including, but not limited to, information relating to the minimum standards test.

(4) For the purposes of this Schedule, "**information relating to the minimum standards test**" means information relating to whether P is a fit person to be a specified legal services person, including certification by the notifying person or body as to whether P has at any time –

(a) been convicted of any offence, other than an offence which –

(i) is spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, or

(ii) falls within a category specified in regulations made for this purpose by the Committee,

(b) engaged in any business practices which are, or which might reasonably be regarded as appearing to be, deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on the person's method of conducting business or the

person's suitability to provide non-local legal services, or

(c) engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her soundness of judgement.

(5) Without prejudice to the generality of subparagraph (4), and for the avoidance of doubt, when assessing whether a person is a fit person to be a specified legal services person for the purposes of this Schedule, regard shall be had to the person's probity, integrity, honesty and soundness of judgement.

(6) For the avoidance of doubt, a non-local legal services business employing P or otherwise paying P for professional services, or of which P is a partner, may be a notifying person or body (as the case may be) for the purposes of this paragraph and paragraph 5, and this Schedule shall be construed accordingly.

Ongoing notification requirement.

5. A specified legal services person (**"P"**), or any other person or body who has notified the Administrator under paragraph 4(1) or (2) and who continues to act on behalf of P for the purposes of this Schedule, must –

(a) provide the Administrator with information relating to the minimum standards test in respect of P within 21 days (or such other period as the Administrator may reasonably specify in all the circumstances) of being requested to do so, and

(b) notify the Administrator within 21 days after –

(i) P is convicted of any offence, or

(ii) any other change in respect of information previously provided to the Administrator,

and provide the Administrator with such information relating to that offence or change (as the case may be) as the Administrator may require.

Enforcement – specified legal services person disqualification orders

Specified legal services person disqualification orders.

6. (1) Without prejudice to any other powers of the Administrator, where in the opinion of the Administrator a person is not a fit person to be a specified legal services person, the Administrator may make and subsequently renew, on one or more occasions, an application to the Court for an order (a **"specified legal services person disqualification order"**) prohibiting that person from being a specified legal services person.

(2) A specified legal services person disqualification order may, in the Court's absolute discretion, be made by consent.

(3) A specified legal services person disqualification order and any renewal thereof –

(a) shall have effect for such period (not exceeding 15 years), and

(b) may contain such ancillary, incidental and supplementary terms and conditions,

as shall be specified in it.

(4) Without prejudice to the generality of subparagraph (3) and for the avoidance of doubt, where the person who is the subject of a specified legal services person disqualification order is the beneficial owner of a non-local legal services business, a specified legal services person disqualification order may, for the purpose of (and only to the extent necessary for) giving effect to the prohibition referred to in subparagraph (1), contain terms and conditions requiring the person to divest himself or herself of such rights and interests in the non-local legal services business, within such period, as the Court may specify.

Grounds for making a specified legal services person disqualification order.

7. (1) The Court may make a specified legal services person disqualification order where it considers that, by reason of a person's conduct in relation to a non-local legal services business or otherwise, that person is unfit to be a specified legal services person.

(2) Subject to subparagraph (3), in determining whether a person is unfit to be a specified legal services person, regard shall be had to the matters set out in subparagraphs 4(4)(a) – (c) and (5).

(3) For the avoidance of doubt, the Court may have regard to matters other than those set out in the subparagraphs mentioned above in determining whether a person is unfit to be a specified legal services person.

Revocation of specified legal services person disqualification orders.

8. (1) A person subject to a specified legal services person disqualification order may apply to the Court for a revocation of the order on the ground that he or she is not unfit to be a specified legal services person, and the Court may grant the application if satisfied that –

(a) it would not be contrary to the public interest to do so, and

(b) the applicant is not unfit to be a specified legal services person.

(2) An application under this paragraph for the revocation of a disqualification order shall not be heard unless the Administrator has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may –

(a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit, and

(b) for that purpose adjourn the hearing of the application.

(3) The revocation of a disqualification order may, with the consent of the parties and in the Court's absolute discretion, be granted by consent.

Enforcement – other civil sanctions

Civil penalties.

9. (1) Where the Administrator is satisfied that –

(a) a specified legal services person is not unfit to be a specified legal services person but –

(i) has, without reasonable excuse, failed to comply with a requirement under paragraph 4 or 5, or

(ii) falls within paragraph 4(4)(a) – (c),

(b) a specified legal services person, or a non-local legal services business, has failed to comply with a condition imposed under paragraph 12, or

(c) any other person or body has, without reasonable excuse, failed to comply with –

(i) a requirement under paragraph 4 or 5, or

(ii) a request made by the Administrator to provide information (whether to the Administrator or another person) relevant to the exercise of the Administrator's functions,

the Administrator may (subject to the provisions of this paragraph and paragraph 13) –

A. impose on that person or business a financial penalty in respect of the failure to comply that gave rise to the liability of such amount as the Administrator considers appropriate and proportionate, but not exceeding £20,000 or such other amount as the Committee may prescribe by regulations,

B. publish the name of the person or business on whom the penalty is to be

imposed, the amount of the penalty, and any ancillary, incidental and supplementary information as the Administrator considers appropriate and proportionate (together, **"publicise the penalty"**).

(2) In deciding whether to impose a penalty under this paragraph and, if so –

(a) the amount thereof, and

(b) whether to publicise the penalty,

the Administrator must take into consideration the following factors –

(i) whether the failure was brought to the attention of the Administrator by the person concerned,

(ii) the seriousness of the failure,

(iii) whether or not the failure was inadvertent,

(iv) what efforts, if any, have been made to rectify the failure and to prevent a recurrence,

(v) the potential financial consequences to the person or business concerned, and to third parties including clients, customers and creditors of that person, of imposing a penalty and publicising the penalty,

(vi) the penalties imposed by the Administrator under this paragraph in other cases, and

(vii) any other matter the Administrator considers relevant.

(3) Any financial penalty imposed under this paragraph is payable to the States and is recoverable as a civil debt.

(4) Where the Administrator proposes to impose a financial penalty, he or she must notify in writing the person or business on whom the penalty is to be imposed of –

(a) the proposed penalty, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to impose the penalty, which must not be less than 42 days after the date of the notice,

(c) whether the Administrator intends to publicise the penalty (and, if so, what ancillary, incidental and supplementary information, if any, the Administrator intends to publish), and

(d) the right of that person or business to make written representations to the Administrator under paragraph 13(1).

(5) Where the Administrator imposes a financial penalty he or she must –

(a) issue to the person or business on whom the penalty is being imposed notice of the penalty, and

(b) include in the notice a statement of the right to apply to the Court under paragraph 15.

Private reprimands.

10. (1) Without prejudice to any other powers of the Administrator, where the Administrator considers that, having regard to the conduct of a specified legal services person, it is appropriate to do so, the Administrator may issue to the person a private reprimand.

(2) The Administrator may not publish a private reprimand without the consent of the person in question.

(3) A private reprimand issued under subparagraph (1) may be taken into account by the Administrator in considering any matter under this Schedule concerning the person in question.

Public statements.

11. (1) Without prejudice to any other powers of the Administrator, where in the opinion of the Administrator a specified legal services person ("P") has contravened in a material particular –

(a) a provision of this Schedule, or

(b) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

it may publish, in such manner and for such period as the Administrator may determine, a statement to that effect.

(2) Where the Administrator proposes to publish a statement under this paragraph, he or she must notify in writing the person in respect of whom the statement is to be published of –

(a) the text of the proposed statement, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to publish the statement, which must not be less than 42 days after the date of the notice, and

(c) that person's right to make written representations to the Administrator under paragraph 13(1).

(3) A statement published under subparagraph (1) may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information (including information as to any conditions imposed on the person under paragraph 12) as the Administrator may determine to be appropriate and proportionate in the circumstances of the case, taking into account the purposes set out at paragraph 1(4).

(4) In deciding whether or not to publish a statement under this paragraph and, if so, the terms thereof, the Administrator must take into consideration the following factors –

(a) whether the contravention was brought to the attention of the Administrator by P,

(b) the seriousness of the contravention,

(c) whether or not the contravention was inadvertent,

(d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,

(e) the potential financial consequences to P, and to third parties including clients, customers and creditors of P, of publishing a statement,

(f) the action taken by the Administrator under this paragraph in other cases, and

(g) any other matter the Administrator considers relevant.

(5) If at any time it appears to the Administrator that a statement published under this paragraph or any information contained in it is or has become misleading, inaccurate or incomplete, or that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick to do so, the Administrator shall make such addition, erasure or other alteration to the statement or content thereof as the Administrator considers necessary.

(6) Where the Administrator proposes to make an addition, erasure or other alteration to a statement or content thereof under subparagraph (5), he or she must notify in writing the person in respect of whom the statement was published of –

(a) the text of the proposed addition, erasure or other alteration, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to publish the addition, erasure or other alteration which, unless the person concerned otherwise agrees, must not be less than 28 days after the date of the notice, and

(c) that person's right to make written representations to the Administrator under paragraph 13(1).

(7) A statement published under subparagraph (1) may be taken into account by the Administrator in considering any matter under this Schedule concerning the person in question.

Imposition of conditions.

12. (1) Without prejudice to any other powers of the Administrator, where the Administrator considers that, having regard to the conduct of a specified legal services person or a non-local legal services business, it is appropriate to do so, the Administrator may impose conditions on that person or business in respect of the person or business's conduct in the provision of non-local legal services.

(2) Where the Administrator proposes to impose conditions under this paragraph, he or she must notify in writing the person or business in respect of whom or which the conditions are to be imposed of –

(a) the conditions, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to impose the conditions, which must not be less than 42 days after the date of the notice,

(c) the duration of the conditions, and

(d) that right of that person or business to make written representations to the Administrator under paragraph 13(1).

Representations prior to civil penalty, etc.

13. (1) The person or business notified under paragraph 9(4), 11(2), 11(6) or 12(2) may make written representations to the Administrator concerning the proposed financial penalty (including publicising the penalty), public statement, addition, erasure or other alteration or conditions (as the case may be) within 28 days of the date of the notice.

(2) If the person or business in question exercises their right under subparagraph (1) the Administrator –

(a) must consider their representations, and

(b) may decide to –

(i) impose the penalty, publicise the penalty, publish the statement or impose the conditions,

(ii) in the case of a proposed financial penalty, impose a penalty in a lesser amount, not publicise the penalty, issue a private reprimand, publish a statement or impose conditions,

(iii) withdraw the penalty, not publish the statement or not impose the conditions, or

(iv) postpone the date for imposing the penalty, publishing the statement or imposing the conditions,

as the case may be, but in any event must inform that person or business of his or her decision in writing, and the reasons for the same, before the date on which the financial penalty is imposed or would otherwise have been imposed, the statement is published or would otherwise have been published, or the conditions are imposed or would otherwise have been imposed, as the case may be.

(3) For the avoidance of doubt, where the Administrator has imposed a financial penalty under paragraph 9 he or she may not seek to recover payment of that penalty until –

(a) 28 days immediately following the date of the notice of the penalty issued under paragraph 9(5)(a), or

(b) if an application to the Court is instituted within that period under paragraph 15, the final determination, or withdrawal, of that application,

and for the purposes of this subparagraph, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

Relationship of civil penalties with prosecutions.

14. (1) A person is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after a civil penalty has been

paid, the Administrator shall repay the civil penalty.

General right to apply to Court to set aside action of Administrator.

15. (1) Without prejudice to any specific right of appeal in any enactment, a person who is directly affected by any action, direction, decision or determination of the Administrator (including an order imposing a financial penalty) may apply to the Court to set aside that action, direction, decision or determination.

(2) An application under subparagraph (1) shall be made in such manner (if any) as may be prescribed by order of the Court.

(3) On such an application the Court may make such order on such terms and conditions as it thinks fit.

(4) Subject to any direction given by the Court –

(a) the applicant shall give at least seven days' notice of the application to the Administrator,

(b) where the application is made in respect of a legal person and the applicant is not the legal person in respect of which the application is made, the applicant shall give at least seven days' notice of the application to the legal person, and

(c) the application shall be made within 21 days after the day of the action, direction, decision or determination of the Administrator.

(5) An appeal from an order of the Court under this paragraph lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question

of law.

(6) Section 21 of the Court of Appeal (Guernsey) Law, 1961 (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this paragraph as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Enforcement: offences

Offences: general.

16. (1) A person who contravenes any provision of a specified legal services person disqualification order is guilty of an offence.

(2) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

False or misleading information.

17. (1) If a person to whom subparagraph (2) applies –

(a) makes a statement which the 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 the 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,

he or she is guilty of an offence.

(2) This subparagraph applies to a person (**"D"**) who –

(a) makes any statement or provides any information or document to the Administrator, or to any officer, servant or agent of the Administrator, when the Administrator or that person is acting in the exercise of his or her functions, or

(b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Administrator in circumstances in which D knows or could reasonably be expected to know that the statement, information or document would or might be used by the Administrator for the purpose of exercising his or her functions.

(3) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

Miscellaneous and Final

Disclosure and publication of non-confidential information.

18. Any information held by the Administrator, other than confidential information, may be disclosed or published by him or her –

(a) in accordance with the provisions of this Schedule, any other enactment or any rule of law, or

(b) if no such provision is made, in such manner, subject to such conditions and for such purposes as he or she thinks fit.

Disclosure and publication of confidential information.

19. (1) Any confidential information held by the Administrator shall not be disclosed or published by the Administrator or by any officer, servant or agent of the Administrator except –

(a) with the consent of every individual who, and every body which, can be identified from that information,

(b) to the persons and bodies set out in subparagraph (2), where the Administrator considers that disclosure necessary and proportionate –

(i) for the purposes set out in paragraph 1(4), or

(ii) for the performance of the functions of the person or body,

(c) to any authority appearing to the Administrator to exercise, in a place outside the Bailiwick, functions

corresponding to the Administrator's, where the Administrator considers that disclosure necessary and proportionate –

(i) for the purposes set out in paragraph 1(4), or

(ii) for the performance of the functions of the authority,

(d) (for the avoidance of doubt) in, or in response to, an application to the Court made under paragraph 6 or 8 (as the case may be),

(e) as provided for under paragraphs 9 to 12, or

(f) in accordance with any other enactment or any rule of law.

(2) The persons and bodies referred to in subparagraph (1) are –

(a) the Commission,

(b) the Director of the Economic and Financial Crime Bureau,

(c) the Head of the Financial Intelligence Unit,

(d) the Registrar of Companies (including in his or her capacity as the Registrar of Foundations),

(e) the Registrar of Limited Liability Partnerships,

(f) the Registrar within the meaning of the Companies (Alderney) Law, 1994,

(g) the Registrar of Beneficial Ownership,

(h) His Majesty's Greffier,

(i) any body or person with the function of implementing or enforcing international sanctions measures within the Bailiwick,

(j) His Majesty's Greffier within the meaning of the Government of Alderney Law, 2004,

(k) the Alderney Gambling Control Commission,

(l) the Director of the Revenue Service,

(m) the Registrar of Charities and other Non Profit Organisations under the Charities etc. (Guernsey and Alderney) Ordinance, 2021, and

(n) the Registrar of Non Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010.

Exclusion of liability.

20. (1) No person undertaking a function under this Schedule is to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, after the coming into force of this Law in respect of that

function, unless the thing was done or omitted to be done in bad faith.

(2) Subparagraph (1) does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

Service of notices and documents.

21. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Schedule may be given to or served upon –

(a) an individual (**"A"**), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,

(b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to –

(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(d) an unincorporated body –

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with subparagraph (a), or

(ii) by being left at, or sent by post to –

(A) the body's principal or last known principal place of business in the Bailiwick, or

(B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(e) the Administrator, by being left at, or sent by post to, his or her principal office in the Bailiwick, or by being transmitted to his or her electronic address,

and in this paragraph –

(i) **"by post"** means by special delivery, recorded or signed for delivery or ordinary letter post,

(ii) **"electronic address"** includes, without limitation, an e-mail address and telecommunications address,

(iii) **"relevant electronic address"** means an electronic address –

(A) with which, in the opinion of the Administrator, the person concerned has a personal, business or other connection, and

(B) a document transmitted to which is likely to come to the attention of the person concerned,

(iv) **"transmitted"** means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication, and

(v) **"summons"** includes any document compelling a person's attendance before the court.

(2) Subparagraph (1) is without prejudice to any other lawful method of service.

(3) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Schedule to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a business day.

(4) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(5) A document shall be deemed for the purposes of this Schedule to have been –

(a) addressed to the person concerned, and

(b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this paragraph, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

The Bar Law, etc.

22. The provisions of this Schedule are without prejudice to the provisions

of the Guernsey Bar (Bailiwick of Guernsey) Law, 2007 and subordinate legislation made thereunder, the Bar Ordinance, 1949 and the customary law of the Bailiwick, including (but not limited to) statutory provisions and customary law relating to the functions of His Majesty's Greffier, la Chambre de Discipline, the Royal Court and His Majesty's Procureur.

Legal professional privilege and protection from self-incrimination unaffected.

23. For the avoidance of doubt, nothing in this Schedule limits a right to decline to produce or deliver documents or other information to the Administrator on the ground of –

(a) legal professional privilege, or

(b) any rule against self-incrimination.

Power of Committee to make regulations in respect of qualification requirements.

24. (1) The Committee may make regulations making provision in respect of the professional qualification of persons providing non-local legal services.

(2) Regulations made under this paragraph shall be made after consultation with the policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark; but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.

Specified jurisdictions.

25. (1) A person is not a specified legal services person for the purposes of this Schedule in circumstances where the person –

(a) is subject to requirements as to fitness and propriety imposed by a jurisdiction outside the Bailiwick which

the Committee is satisfied are appropriate minimum standards, and

(b) undertakes non-local legal services primarily from or within a jurisdiction outside the Bailiwick,

and the Committee may make regulations specifying jurisdictions which it is satisfied impose appropriate requirements for the purpose of item (a).

(2) Regulations made under this paragraph shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark; but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.

Interpretation.

26. (1) In this Schedule –

"beneficial owner" has the meaning given in paragraph 22 of Schedule 3, subject to the following modification: wherever "25%" appears, there is substituted "15%",

"confidential information" means –

(a) an individual's usual residential address,

(b) the identity of any person whom the Administrator has been notified is the beneficial owner of a non-local legal services business, and

(c) any other information from which an individual or body can be identified which is acquired by the

Administrator in the course of carrying out his or her functions,

"the Court" means the Royal Court sitting as an Ordinary Court,

"information relating to the minimum standards test": see paragraph 4(4),

"non-local legal services" means the business of being a non-locally qualified –

(a) lawyer,

(b) notary, or

(c) other independent legal professional,

(where **"non-locally qualified"** means not being admitted as an Advocate) within the meaning given in and falling within paragraph 5 of Schedule 2, but does not include such a business in circumstances where that business is not required to register with the Commission pursuant to Schedule 5 of the Criminal Justice (Proceeds of Crime) Law, 1999,

"non-local legal services business" means a business engaged in legal services that –

(a) carries on, or holds itself out as carrying on, business in, or from within, the Bailiwick (and, for the avoidance of doubt, does not include a business which is not required to register with the Commission pursuant to

Schedule 5 of the Criminal Justice (Proceeds of Crime) Law, 1999, and

(b) employs, or is beneficially owned by (in whole or in part), one or more persons who provide non-local legal services,

"non-locally qualified legal professional" means –

(a) a partner, director (or equivalent to these roles) of a non-local legal services business who provides non-local legal services in, or from within, the Bailiwick,

(b) any other person who provides non-local legal services in, or from within, the Bailiwick, where that person also participates in, or is in any way concerned (directly or indirectly) in the management of a non-local legal services business, or

(c) a Money Laundering Reporting Officer or a Money Laundering Compliance Officer of a non-local legal services business,

"publicise the penalty": see paragraph 9(1)B (and **"publicising the penalty"** shall be construed accordingly),

"relevant person" means the beneficial owner of a non-local legal services business,

"specified legal services person": see paragraph 1(5), and

"specified legal services person disqualification order": see paragraph 6(1).

(2) The Committee may make regulations amending the definitions of **"beneficial owner"**, **"confidential information"**, **"non-local legal services"**, **"non-local legal services business"** and **"non-locally qualified legal professional"** in subparagraph (1).

(3) Regulations made under subparagraph (2) shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.]

NOTES

Schedule 8 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2023, section 4, Schedule, with effect from 20th October, 2023, save that, in accordance with the provisions of regulation 1(2) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2023 (Commencement) Regulations, 2023, section 4 of and the Schedule to the 2023 Ordinance did not come into force, to the extent that this Schedule applied to persons undertaking non-local legal services primarily from or within a jurisdiction outside the Bailiwick and, consequently, paragraph 25 of this Schedule did not come into force on that date. The 2023 Ordinance came into force for all remaining purposes on 24th November, 2023 in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Specified Jurisdictions) Regulations, 2023, regulation 1.

The following Regulations have been made under Schedule 8:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Specified Jurisdictions) Regulations, 2023;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Professional Qualifications – Accountants and Non-Locally Qualified Legal Professionals) Regulations, 2024.

[SCHEDULE 9 Section 49AA(3C)

FUNCTIONS OF HIS MAJESTY'S GREFFIER REGARDING ADVOCATES

Functions of His Majesty's Greffier under this Schedule

Functions of Greffier.

1. (1) In addition to functions conferred under other paragraphs of this Schedule, the functions of His Majesty's Greffier under this Schedule are to communicate and co-operate with –

(a) any authority appearing to His Majesty's Greffier to exercise, in a place outside the Bailiwick, functions corresponding to His Majesty's Greffier's under this Schedule and under Part II of the Guernsey Bar (Bailiwick of Guernsey) Law, 2007, and

(b) such other persons as he or she thinks fit,

for the purposes of assisting such authorities and persons and promoting, and enhancing the performance of, His Majesty's Greffier's functions under this Schedule, and such communication and co-operation may, without limitation, take the form of sharing any information which His Majesty's Greffier may lawfully disclose.

(2) Subparagraph (1) does not authorise His Majesty's Greffier to disclose confidential information other than in accordance with paragraph 8.

(3) The purpose of conferring functions on His Majesty's Greffier under this Schedule is –

(a) to prevent unfit persons from being Advocates, and

(b) thereby to protect the interests of the people, and the reputation, of the Bailiwick,

and His Majesty's Greffier must take account of these purposes when exercising his or her functions under this Schedule.

Ancillary powers of Greffier.

2. (1) His Majesty's Greffier has power to do anything that appears to His Majesty's Greffier to be necessary or expedient for the purpose of exercising his or her functions under this Schedule including, without limitation, power –

(a) to require the production of such documents, accounts and information from such persons and within such periods and at such times and intervals as he or she thinks fit, including, but not limited to –

(i) Advocates,

(ii) local legal services businesses,

(iii) the beneficial owners and legal owners of local legal services businesses,

(iv) the directors of local legal services businesses,

(v) the partners of local legal services businesses,

(vi) the controllers of local legal services businesses, and

(vii) the managers of local legal services businesses,

(b) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents, and

(c) to request advice from His Majesty's Procureur in relation to the exercise of any of his or her functions.

(2) His Majesty's Greffier may also exercise the power at subparagraph (1)(a) for the purpose of enabling him or her (of His Majesty's Greffier's own volition or at the request of the Committee or any other authority within the Bailiwick with functions in respect of financial crime) to obtain information relating to legal persons so that he or she can identify, assess and understand risks to the Bailiwick of money laundering, terrorist financing, the proliferation of weapons of mass destruction and all other forms of financial crime.

(3) For the avoidance of doubt (and without prejudice to any function conferred under any other enactment) His Majesty's Greffier may –

(a) seek and receive information from any person, and

(b) take any such information into account in deciding whether and in what manner to exercise his or her functions.

Notification requirements

Initial notification requirement.

3. (1) Subject to subparagraph (2), a person (**"P"**) or a person or body acting on P's behalf must notify His Majesty's Greffier before P becomes a managing Advocate.

(2) Where, on the coming into force of this Schedule, a person ("**P**") is a managing Advocate, P, or a person or body acting on P's behalf, must notify His Majesty's Greffier within 14 days of this Schedule coming into force.

(3) A person or body notifying His Majesty's Greffier under subparagraph (1) or (2) must provide such information as His Majesty's Greffier may specify in guidance that His Majesty's Greffier causes to be published on the States of Guernsey website from time to time, including, but not limited to, information relating to the minimum standards test.

(4) For the purposes of this Schedule, "**information relating to the minimum standards test**" means information relating to whether P is a fit person to be an Advocate, including certification by the notifying person or body as to whether P has at any time –

(a) been convicted of any offence, other than an offence which –

(i) is spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, or

(ii) falls within a category specified in regulations made for this purpose by the Committee,

(b) engaged in any business practices which are, or which might reasonably be regarded as appearing to be, deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on

the person's method of conducting business or the person's suitability to carry on legal services, or

(c) engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her soundness of judgement.

(5) Without prejudice to the generality of subparagraph (4), and for the avoidance of doubt, when assessing whether a person is a fit person to be an Advocate for the purposes of this Schedule, regard shall be had to the person's probity, integrity, honesty and soundness of judgement.

(6) For the avoidance of doubt, a local legal services business employing P or otherwise paying P for professional services, or of which P is a partner, may be a notifying person or body (as the case may be) for the purposes of this paragraph and paragraph 4, and this Schedule shall be construed accordingly.

[(7) In this paragraph and paragraph 4 (ongoing notification requirement), reference to a **"managing Advocate"** includes a beneficial owner of a local legal services business.]

Ongoing notification requirement.

4. A managing Advocate (**"P"**), or any other person or body who has notified His Majesty's Greffier under paragraph 3(1) or (2) and who continues to act on behalf of P for the purposes of this Schedule, must –

(a) provide His Majesty's Greffier with information relating to the minimum standards test in respect of P within 21 days (or such other period as His Majesty's

Greffier may reasonably specify in all the circumstances) of being requested to do so, and

(b) notify His Majesty's Greffier within 21 days after –

(i) P is convicted of any offence, or

(ii) any other change in respect of information previously provided to His Majesty's Greffier,

and provide His Majesty's Greffier with such information relating to that offence or change (as the case may be) as His Majesty's Greffier may require.

Enforcement – referral of Advocates to the Chambre

Referral of Advocates to the Chambre.

5. (1) Where information provided to His Majesty's Greffier relating to the minimum standards test in respect of a managing Advocate is such that, in the opinion of His Majesty's Greffier, the managing Advocate is not a fit person to be an Advocate, His Majesty's Greffier shall refer the managing Advocate to the Bâtonnier of the Guernsey Bar under Part II (discipline of Advocates) of the Guernsey Bar (Bailiwick of Guernsey) Law, 2007.

(2) When referring a managing Advocate under subparagraph (1), the Greffier shall disclose the information relating to the minimum standards test referred to in that subparagraph.

Offence

False or misleading information.

6. (1) If a person to whom subparagraph (2) applies –

(a) makes a statement which the 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 the 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,

he or she is guilty of an offence.

(2) This subparagraph applies to a person (**"D"**) who –

(a) makes any statement or provides any information or document to His Majesty's Greffier, or to any officer, servant or agent of His Majesty's Greffier, when His Majesty's Greffier or that person is acting in the exercise of his or her functions, or

(b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to His Majesty's Greffier in circumstances in which D knows or could reasonably be expected to know that the statement, information or document would or might be used by His Majesty's Greffier for the purpose of exercising his or her functions.

(3) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

Miscellaneous and Final

Disclosure and publication of non-confidential information.

7. Any information held by His Majesty's Greffier, other than confidential information, may be disclosed or published by him or her–

(a) in accordance with the provisions of this Schedule, any other enactment or any rule of law, or

(b) if no such provision is made, in such manner, subject to such conditions and for such purposes as he or she thinks fit.

Disclosure and publication of confidential information.

8. (1) Any confidential information held by His Majesty's Greffier shall not be disclosed or published by His Majesty's Greffier or by his or her servants or agents except –

(a) with the consent of every individual who, and every body which, can be identified from that information,

(b) to the persons and bodies set out in subparagraph (2) where His Majesty's Greffier considers that disclosure necessary and proportionate –

(i) for the purposes set out in paragraph 1(4), or

(ii) for the performance of the functions of the person or body,

(c) to any authority appearing to His Majesty's Greffier to exercise, in a place outside the Bailiwick, functions corresponding to His Majesty's Greffier under this Schedule, where His Majesty's Greffier considers that disclosure necessary and proportionate –

(i) for the purposes set out in paragraph 1(3), or

(ii) for the performance of the functions of the authority, or

(d) in accordance with any other enactment or any rule of law.

(2) The persons and bodies referred to in subparagraph (1) are –

(a) the Commission,

(b) the Director of the Economic and Financial Crime Bureau,

(c) the Head of the Financial intelligence Unit,

(d) the Registrar of Companies (including in his or her capacity as the Registrar of Foundations),

(e) the Registrar of Limited Liability Partnerships,

(f) the Registrar within the meaning of the Companies (Alderney) Law, 1994,

(g) the Registrar of Beneficial Ownership,

(h) any body or person with the function of implementing or enforcing international sanctions measures within the Bailiwick,

(i) His Majesty's Greffier within the meaning of the Government of Alderney Law, 2004,

(j) His Majesty's Greffier acting in exercise of the functions conferred under the Limited Partnerships (Guernsey) Law, 1995,

(k) the Alderney Gambling Control Commission,

(l) the Director of the Revenue Service,

(m) the Registrar of Charities and other Non Profit Organisations under the Charities etc. (Guernsey and Alderney) Ordinance, 2021,

(n) the Registrar of Non Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010, and

(o) the Administrator of non-locally qualified legal professionals.

Exclusion of liability.

9. (1) No person undertaking a function under this Schedule is to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, after the coming into force of this Law in respect of that function, unless the thing was done or omitted to be done in bad faith.

(2) Subparagraph (1) does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

Service of notices and documents.

10. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Schedule may be given to or served upon –

(a) an individual ("**A**"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,

(b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to –

(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(d) an unincorporated body –

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with subparagraph (a), or

(ii) by being left at, or sent by post to –

(A) the body's principal or last known principal place of business in the Bailiwick, or

(B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(e) His Majesty's Greffier, by being left at, or sent by post to, his or her principal office in the Bailiwick, or by being transmitted to his or her electronic address,

and in this paragraph –

(i) **"by post"** means by special delivery, recorded or signed for delivery or ordinary letter post,

(ii) **"electronic address"** includes, without limitation, an e-mail address and telecommunications address,

(iii) **"relevant electronic address"** means an electronic address –

(A) with which, in the opinion of His Majesty's Greffier, the person concerned has a personal, business or other connection, and

(B) a document transmitted to which is likely to come to the attention of the person concerned,

(iv) **"transmitted"** means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication, and

(v) **"summons"** includes any document compelling a person's attendance before the court.

(2) Subparagraph (1) is without prejudice to any other lawful method of service.

(3) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Schedule to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a business day.

(4) Service of any document sent by post shall be proved by

showing the date of posting, the address thereon and the fact of prepayment.

(5) A document shall be deemed for the purposes of this Schedule to have been –

(a) addressed to the person concerned, and

(b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this paragraph, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

The Bar Law, etc.

11. The provisions of this Schedule are without prejudice to the provisions of the Guernsey Bar (Bailiwick of Guernsey) Law, 2007 and subordinate legislation made thereunder, the Bar Ordinance, 1949 and the customary law of the Bailiwick, including (but not limited to) statutory provisions and customary law relating to the functions of la Chambre de Discipline, the Royal Court and His Majesty's Procureur.

Legal professional privilege and protection from self-incrimination unaffected.

12. For the avoidance of doubt, nothing in this Schedule limits a right to decline to produce or deliver documents or other information to His Majesty's Greffier on the ground of –

(a) legal professional privilege, or

(b) any rule against self-incrimination.

Interpretation.

13. (1) In this Schedule –

"beneficial owner" has the meaning given in paragraph 22 of Schedule 3, subject to the following modification: wherever "25%" appears, there is substituted "15%",

"confidential information" means –

(a) an individual's usual residential address,

(b) the identity of any person whom His Majesty's Greffier has been notified is the beneficial owner of a local legal services business, and

(c) any other information from which an individual or body can be identified which is acquired by the Administrator in the course of carrying out his or her functions,

"the Court" means the Royal Court sitting as an Ordinary Court,

"information relating to the minimum standards test": see paragraph 3(4),

"local legal services" means the business of being an Advocate, but does not include such a business in circumstances where that business is not required to register with the Commission pursuant to Schedule 5 of the Criminal Justice (Proceeds of Crime) Law, 1999,

"local legal services business" means a business engaged in local

legal services that carries on, or holds itself out as carrying on, business in, or from within, the Bailiwick (and, for the avoidance of doubt, does not include a business which is not required to register with the Commission pursuant to Schedule 5 of the Criminal Justice (Proceeds of Crime) Law, 1999), and

"managing Advocate" means an Advocate participating in, or being in any way concerned (directly or indirectly) in the management of a local legal services business [(and see also paragraph 3(7))].

(2) The Committee may make regulations amending the definitions of **"beneficial owner"**, **"confidential information"**, **"local legal services"**, **"local legal services business"** and **"managing Advocate"** in subparagraph (1).

(3) Regulations made under subparagraph (2) shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.]

NOTES

Schedule 9 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2023, section 4, Schedule, with effect from 20th October, 2023.

In Schedule 9, first, paragraph 3(7) and, second, the words in square brackets in the definition of the expression "managing Advocate" in paragraph 13 were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024, respectively section 2(2) and section 2(3), with effect from 24th April. 2024;

[SCHEDULE 10 Section 49AB(1)

UNREGULATED OFFICERS

Application.

1. This Schedule applies to all unregulated officers.

Information duties.

2. (1) An unregulated officer shall obtain and hold adequate, accurate and current information (**"the required information"**) within the meaning of subparagraphs (2) to (4).

(2) In the case of a relevant trust, the required information is information on the identity of –

(a) the settlor of the trust,

(b) any other trustee of the trust,

(c) the protector (if any) of the trust,

(d) subject to subparagraph (4), the beneficiaries of the trust, and

(e) any other natural person exercising ultimate effective control over the trust.

(3) In the case of a relevant partnership, the required information is information on the identity of –

(a) any other general partner of the partnership,

(b) where the relevant partnership is a limited partnership, and subject to subparagraph (4), the limited partners of the partnership, and

(c) any other natural person exercising ultimate effective control over the partnership.

(4) In respect of a class of beneficiaries or limited partners of such a size that it is not reasonably practicable to identify each member of the class, the information that should be obtained and held is information sufficient to identify and describe the class of individuals who are beneficiaries or limited partners, as the case may be, with sufficient accuracy to make it possible to ascertain that an individual is or is not a member of that class.

(5) An unregulated officer must hold information on the identity of any regulated agents and service providers to the relevant trust or relevant partnership as the case may be.

(6) An unregulated officer must ensure that all information required to be held by that officer under this paragraph –

(a) so far as is possible, is accurate and up to date, and

(b) is updated on a timely basis.

Record keeping etc.

3. (1) Records of the information required to be obtained and held under paragraph 2 –

(a) must be maintained for the period specified within the meaning of subparagraph (2) (**"the specified period"**), and

(b) may be kept in any manner or form, provided that they are readily retrievable.

(2) The specified period is –

(a) in the case of the required information, a period of at least five years starting from the date of the dissolution or termination of the relevant trust or relevant partnership in question, as the case may be,

(b) in the case of information required within paragraph 2(5), a period of at least five years starting from the date –

(i) where the regulated agent or service provider has established a business relationship in respect of the trust or partnership, as the case may be, that relationship ceased, or

(ii) where the regulated agent or service provider has carried out an occasional transaction in respect of the trust or partnership, the transaction was completed.

(3) Without prejudice to subparagraphs (1) and (2), where an unregulated officer is requested to retain or provide any information obtained and held under paragraph 2 by any of the relevant authorities in the exercise of their

functions (including, for the avoidance of doubt, assessing the risks to the Bailiwick from money laundering, terrorist financing, breach of international sanctions measures or any other form of economic or financial crime) the unregulated officer should retain that information for as long as requested by the relevant authority in question.

Disclosure of status.

4. (1) Where –

(a) an unregulated officer –

(i) enters into a business relationship with, or

(ii) carries out or is otherwise involved in an occasional transaction with,

a financial services business or a relevant business, and

(b) the unregulated officer is carrying out the activity at item (a) in that unregulated officer's capacity as a trustee of a relevant trust or a partner of a relevant partnership [(or an equivalent role in relation to a foreign legal arrangement)], as the case may be,

the unregulated officer must disclose the matters in item (b) to the financial services business or relevant business in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.

Power to disclose information.

5. (1) An unregulated officer of a relevant trust or a relevant partnership [(or the equivalent officer of a foreign legal arrangement)] may disclose upon request –

(a) to any of the relevant authorities, any information relating to the trust or partnership [(or foreign legal arrangement)], as the case may be, and

(b) to a financial services business or a relevant business in the circumstances described in paragraph 4(1)(a), any information relating to –

(i) the beneficial ownership of the trust or partnership [(or foreign legal arrangement)], as the case may be, and

(ii) any assets of the trust or partnership [(or foreign legal arrangement)], as the case may be, that are to be held or managed under the terms of a business relationship or occasional transaction in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.

Offences as to false and misleading information.

6. If a person –

(a) in purported compliance with a requirement imposed by this Schedule, or

(b) otherwise than as mentioned in item (a) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by the person would or might be relied upon by, as the case may be, a relevant authority, a financial services business or a relevant business,

does any of the following –

(i) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

the person is guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both or on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale or both.

Offences: general.

7. (1) Any person who contravenes any requirement of this Schedule shall be guilty of an offence and liable –

(a) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both,

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

(2) In determining whether a person has contravened a requirement of this Schedule, a court may take account of any guidance issued by the Committee that the court considers relevant to the requirement concerned.

(3) It is a defence for a person charged with an offence under this paragraph to prove that they have taken all reasonable precautions or measures to avoid the commission of the offence.

Interpretation.

8. (1) In this Schedule, unless the context requires otherwise, expressions defined in this Law have those meanings, and the following expressions have the following meanings –

"regulated agent": see Schedule 3,

"relevant authorities": see Schedule 3 (and **"relevant authority"** shall be construed accordingly),

"the required information": see paragraph 2,

"service provider": see Schedule 3, and

"the specified period": see paragraph 3.]

NOTES

Schedule 10 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023, section 1(5), Schedule, with effect from 16th October, 2023, subject to the transitional provision in regulation 2 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023 (Commencement) Regulations, 2023, whereby, as regards a relevant trust or relevant partnership that was established or formed before the coming into force of the 2023 Ordinance, the duties imposed under paragraphs 2 and 3 of this Schedule shall not come into force until 31st December, 2023.

In Schedule 10, first, the words in square brackets in paragraph 4(1)(b), second, the words in the first pair of square brackets in paragraph 5(1) and, third, the words in the second, third and fourth pairs of square brackets therein were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2024, respectively regulation 1(3)(a), regulation 1(3)(b)(i) and regulation 1(3)(b)(ii), with effect from 22nd April, 2024.

[SCHEDULE 11 Section 48O(4)

[SEIZED ASSETS FUND]

Division of monies in the Fund.

1. (1) Subject to the provisions of any regulations made under subparagraph (2), monies in the Fund shall be divided between an account to be held by the States of Guernsey, to be called the Internal Fund, and the Social Investment Fund, in the following proportions –

(a) the Internal Fund: 80%,

(b) the Social Investment Fund: 20%.

(2) The Committee may make regulations providing for monies in the Fund allocated to the States of Guernsey Social Investment Fund to be used for other community purposes in circumstances prescribed in the regulations.

(3) For the purposes of this paragraph, **"other community purposes"** means purposes other than the purposes specified in paragraph 2(1) assessed by the Committee to be of benefit to the wider community of the Bailiwick or a section thereof, including, but not limited to, charitable, cultural, recreational and educational purposes, and **"charitable purposes"** has the meaning given in the Charities etc. (Guernsey and Alderney) Ordinance, 2021.

(4) For the purposes of this paragraph and for the avoidance of doubt, **"the Social Investment Fund"** means the Social Investment Fund LBG, a charity and company limited by guarantee registered in Guernsey.

The Internal Fund.

2. (1) Subject to subparagraphs (2) and (3), the monies in the Internal Fund shall be paid out by the Committee from time to time to such persons, and in

such sums, as they think fit for the purposes of –

(a) improving the performance of the criminal justice system in the Bailiwick (including, but not limited to, asset recovery),

(b) the effective implementation of international standards relating to the prevention of economic crime, and

(c) the reduction of crime, and of the damage caused by crime, in the Bailiwick.

(2) Before paying out monies under subparagraph (1), the Committee must consult the Committee for Home Affairs.

(3) When paying out monies under subparagraph (1), the Committee shall have regard to any guidance relating to such payments out given to the Committee from time to time for this purpose by His Majesty's Procureur.

(4) Except to the extent that His Majesty's Procureur advises that any such guidance is operationally sensitive, and for that reason should not be published, guidance under subparagraph (3) shall be published on the States of Guernsey website.]

NOTES

Schedule 11 was inserted by the Criminal Justice (Proceeds of Crime – Seized Assets Fund) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024, section 1(4), Schedule 1, with effect from 26th April, 2024, subject to the transitional provision in section 2 of the 2024 Ordinance.

In Schedule 11, the heading thereto was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2025, section 1(8), with effect from 28th January, 2025.

[SCHEDULE 12 Section 48P(3)
[SEIZED ASSETS MANAGEMENT BOARD]

Membership of the Board.

1. The following shall be members of the Board –

(a) His Majesty's Procureur,

(b) His Majesty's Comptroller,

(c) a member of the Committee appointed by the Committee for this purpose from time to time,

(d) a member of Committee for Home Affairs appointed by that Committee for this purpose from time to time,

(e) the Chief of Police,

(f) the States Treasurer, and

(g) such other officers of the States of Guernsey and officers of police as the members may from time to time appoint, including for the purpose of attending in the absence of other members.

Quorum.

2. The quorum of the Board is five members, who must include –

(a) His Majesty's Procureur or His Majesty's Comptroller,

(b) a member of the Committee, and

(c) a member of Committee for Home Affairs

Procedure.

3. (1) The validity of any proceedings of the Board shall not be affected by any vacancy among the members of the Board or by any defect in the appointment of any such member.

(2) The Board shall keep proper minutes of its proceedings.

(3) Subject to paragraph 2 and subparagraphs (1) and (2) of this paragraph, the Board is free to decide the procedure of its meetings; and for the avoidance of doubt and without limitation, the Board may, if it thinks fit, transact any business by the circulation of papers to all of the members of the Board, or by a telephone or video conference at which each member joining in that telephone or video conference call can hear each other member.

Interpretation.

4. In this Schedule, references to His Majesty's Procureur and His Majesty's Comptroller include references to His Majesty's Receiver General and His Majesty's Deputy Receiver General respectively.]

NOTES

Schedule 12 was inserted by the Criminal Justice (Proceeds of Crime – Seized Assets Fund) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024, section 1(4), Schedule 2, with effect from 26th April, 2024, subject to the transitional provision in section 2 of the 2024 Ordinance.

In Schedule 12, the heading thereto was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2025, section 1(8), with effect from 28th January, 2025.

[SCHEDULE 13 Section 49AA(3D)

ACCESS TO BENEFICIAL OWNERSHIP INFORMATION BY BAILIWICK OBLIGED ENTITIES

Notification by Bailiwick obliged entities.

1. (1) Where a Bailiwick obliged entity wishes to obtain information from the Guernsey Register of Beneficial Ownership in relation to the beneficial ownership of a relevant legal person for a lawful purpose within the meaning of subparagraph (3), an authorised official may notify the Registrar of Beneficial Ownership of that fact on behalf of the Bailiwick obliged entity.

(2) A notification under subparagraph (1) shall be –

(a) accompanied by payment of any administration fee as the Registrar of Beneficial Ownership may specify, and

(b) made in such form and manner as the Registrar of Beneficial Ownership may specify.

(3) A notification under subparagraph (1) is made for a lawful purpose if it is made to assist the Bailiwick obliged entity to carry out its obligations in relation to a person who is a customer or a prospective customer under Part II of Schedule 3 to this Law or, as the case may be, under Part II of Schedule 4 to the eGambling Ordinance.

(4) For the purposes of subparagraph (3), a person (**"P"**) is –

(a) a customer of a Bailiwick obliged entity –

(i) in the case of a Bailiwick obliged entity that is a specified business, if the Bailiwick obliged entity has an existing business relationship with P or has carried out an occasional transaction for or on behalf of P, and

(ii) in the case of a Bailiwick obliged entity that carries out eGambling business, if P is a registered customer of the Bailiwick obliged entity within the meaning of the eGambling Ordinance, and

(b) a prospective customer of a Bailiwick obliged entity –

(i) in the case of a Bailiwick obliged entity that is a specified business, if P has made an application to enter into a business relationship with the Bailiwick obliged entity or an application for the Bailiwick obliged entity to carry out an occasional transaction for or on behalf of P, and

(ii) in the case of a Bailiwick obliged entity that carries out eGambling business, if P has made an application to the Bailiwick obliged entity for registration within the meaning of the eGambling Ordinance.

(5) For the avoidance of doubt, the obtaining of information by a Bailiwick obliged entity under this Schedule is without prejudice to, and (subject to any applicable rules or guidance that may be issued by the Commission or the Alderney Gambling Control Commission) does not fulfil or replace, the obligations

referred to at subparagraph (3).

Disclosure of information by the Registrar of Beneficial Ownership.

2. (1) Subject to paragraph 3 and any regulations made under paragraph 4 –

(a) where the circumstances in subparagraph (2) apply, the Registrar of Beneficial Ownership shall disclose the information within subparagraphs (3) or (4) (**"accessible information"**), as the case may be, in relation to that relevant legal person to the authorised official who made the notification, by the end of the business day following the business day on which the notification was received, and

(b) where the circumstances in subparagraph (2) do not apply, the Registrar of Beneficial Ownership shall inform the authorised official who made the notification of that fact within the time specified in subparagraph (a).

(2) The circumstances in this subparagraph apply where there is information on the Guernsey Register of Beneficial Ownership about the beneficial ownership of a relevant legal person specified in the notification.

(3) Accessible information in respect of a beneficial owner who is an individual is –

(a) the individual's –

(i) name,

(ii) date of birth,

(iii) jurisdiction of residence, and

(iv) nationality, and

(b) the grounds on which the individual is considered to be a beneficial owner.

(4) Accessible information in respect of a beneficial owner who is not an individual is the beneficial owner's –

(a) name,

(b) date of incorporation, and

(c) place of incorporation.

(5) Information shall be disclosed under this paragraph in such form and manner as the Registrar of Beneficial Ownership sees fit.

Invalid notifications.

3. (1) Where the Registrar of Beneficial Ownership receives an invalid notification within the meaning of subparagraph (2), the Registrar of Beneficial Ownership may refuse to disclose any accessible information in relation to that notification.

(2) A notification is invalid if –

(a) for any reason the Registrar of Beneficial Ownership has grounds to believe that the notification does not come within paragraph 1(1),

(b) the notification is not accompanied by payment of an administration fee specified by the Registrar of Beneficial Ownership under paragraph 1(2) (a), or

(c) the notification has not been made in the form and manner specified by the Registrar of Beneficial Ownership under paragraph 1(2) (b).

(3) Where the Registrar of Beneficial Ownership refuses to disclose information under subparagraph (1), the Registrar of Beneficial Ownership shall inform the Bailiwick obliged entity of that fact, and the reason for it, by the end of the business day following the business day on which the notification was received.

(4) Where –

(a) the Registrar of Beneficial Ownership has refused to disclose information under subparagraph (1), and

(b) subsequently is satisfied that the notification is not, or is no longer, invalid,

the Registrar of Beneficial Ownership shall, by the end of the business day following the business day on which the Registrar of Beneficial Ownership became so satisfied, disclose accessible information in respect of the relevant legal person referred to in the notification to the authorised official who made the notification.

(5) Information shall be disclosed under this paragraph in such form and manner as the Registrar of Beneficial Ownership sees fit.

Regulations as to exemptions from disclosure.

4. The Committee may by regulation provide for such exemptions from disclosure of information under paragraphs 2 and 3, and related matters, as it sees fit.

Restrictions on use or further disclosure of information.

5. (1) Information provided by the Registrar of Beneficial Ownership to an authorised official under this Schedule may not be –

(a) used by any person for any purpose other than to carry out the obligations referred to in paragraph 1, or

(b) subject to subparagraph (4), disclosed to another person.

(2) A person who contravenes, or causes or permits any contravention of, the provisions of subparagraph (1) is guilty of an offence and shall be liable –

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, imprisonment for term not exceeding 3 months, or both, and

(b) on conviction on indictment, to a fine, imprisonment for a term not exceeding 2 years, or both.

(3) In deciding whether a person is guilty of an offence under this paragraph, the court must consider whether that person followed any relevant guidance issued by the Registrar of Beneficial Ownership under paragraph 7, or any

relevant rules or guidance issued by the Commission or the Alderney Gambling Control Commission, as the case may be.

(4) Subparagraph (1)(b) does not apply to disclosure of information by a person where –

(a) at the time of disclosure, the information is or has already been made public (other than through an unlawful act or omission of the person making the disclosure),

(b) the disclosure is made to an officer or employee of the Bailiwick obliged entity concerned whose functions include compliance with the obligations referred to at paragraph 1 (3) (or to any other person who carries out those functions on behalf of the Bailiwick obliged entity, provided that this is done in accordance with any applicable rules or guidance issued by the Commission or the Alderney Gambling Control Commission), in connection with or for the purposes of those functions,

(c) the disclosure –

(i) is made by a specified business to another specified business within the same group, and

(ii) is made for the purpose of forestalling and preventing money laundering and for related purposes, within the meaning of this Law, or

(d) the disclosure is made –

(i) with the consent of the person to whom the information relates,

(ii) to comply with an order of a court,

(iii) to any of the relevant authorities,

(iv) for the purposes of seeking advice from a qualified person on any matter requiring the exercise of professional skills in relation to a purpose mentioned in subparagraphs (ii) or (iii), or

(v) for such other purpose as may be specified in regulations made by the Committee.

Notification of discrepancies.

6. (1) Where a Bailiwick obliged entity has received accessible information from the Registrar of Beneficial Ownership and believes that the accessible information or any part of it is incorrect or incomplete –

(a) the Bailiwick obliged entity must report that fact to the Registrar of Beneficial Ownership in the form and manner specified by the Registrar of Beneficial Ownership, and

(b) the report must be made as soon as reasonably possible after the Bailiwick obliged entity has the necessary belief.

Guidance.

7. (1) The Registrar of Beneficial Ownership may publish such guidance as he or she thinks necessary for the purposes of this Schedule.

(2) For the avoidance of doubt, the Registrar of Beneficial Ownership may, from time to time, publish revisions to guidance under this paragraph, or revised guidance.

Information.

8. (1) The Registrar of Beneficial Ownership may exercise, for the purposes of this Schedule, the powers conferred on the Registrar of Beneficial Ownership by paragraphs 4, 4A, 4B and 4D of Schedule 2 to the Guernsey Beneficial Ownership Law.

(2) Subsections (5) to (8) of section 49B and section 49C shall apply, *mutatis mutandis*, to the exercise of powers by the Registrar of Beneficial Ownership under subsection (1) in the same way as those provisions apply to the exercise by the Commission of its powers under section 49B.

(3) Where a person claims a lien on a document, its production under this paragraph is without prejudice to that person's lien.

Supervisory authorities.

9. The Commission or, as the case may be, the Alderney Gambling Commission, shall supervise and enforce compliance with this Schedule by specified businesses, or persons carrying on eGambling business; and the functions, powers and duties of –

(a) the Commission, under this Law or any other enactment, and

(b) the Alderney Gambling Control Commission, under the eGambling Ordinance or any other enactment,

shall apply, *mutatis mutandis*, to that supervision and enforcement by the Commission or, as the case may be, the Alderney Gambling Commission.

Interpretation.

10. (1) In this Schedule –

"accessible information": see paragraph 2,

"authorised official" means –

(a) in relation to a Bailiwick obliged entity that is a specified business (other than one within subparagraph (b)), an individual who –

(i) subject to subparagraph (d), occupies a vetted supervised role (other than solely as a controller), within the meaning, and for the purposes, of any of supervisory Laws, or

(ii) in the case of a prescribed business, is a person involved in estate agency, a person involved in accountancy, a specified legal services person or a managing Advocate, as the case may be,

and has been approved by the board of the Bailiwick obliged entity for the purposes of making a notification under this Schedule; and for this purpose, **"the board of the obliged entity"** shall be construed in accordance

with the definition of the "board" of a specified business in paragraph 21(2) of Schedule 3,

(b) in relation to a Bailiwick obliged entity that is a specified business comprising no more than one individual, that individual,

(c) in relation to a Bailiwick obliged entity that carries on eGambling business, an individual who –

(i) holds a current key individual certificate within the meaning of the eGambling Ordinance in relation to the Bailiwick obliged entity, and

(ii) has been approved by the board of the Bailiwick obliged entity for the purposes of making a notification under this Schedule; and for this purpose, **"the board of the obliged entity"** shall be construed in accordance with the definition of the "board" of a relevant person in paragraph 15(7) of Schedule 4 to the eGambling Ordinance, and

(d) in the case of a specified business that is subject to the provisions of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 or the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, an individual who –

(i) occupies an approved supervised role (other than solely as a controller), within the meaning, and for the purposes, of the Law in question, and

(ii) has been approved by the board of the Bailiwick obliged entity for the purposes of making a notification under this Schedule; and for this purpose, **"the board of the obliged entity"** shall be construed in accordance with the definition of the "board" of a specified business in paragraph 21(2) of Schedule 3,

"Bailiwick obliged entity" means a person (whether or not an individual) that is –

(a) a specified business, or

(b) an eGambling licensee or certificate holder within the meaning of the eGambling Ordinance,

and **"Bailiwick obliged entities"** shall be construed accordingly,

"eGambling business" means the type of business carried out by an eGambling licensee or certificate holder within the meaning of the eGambling Ordinance,

"eGambling Ordinance" means the Alderney eGambling Ordinance, 2009,

"Guernsey Beneficial Ownership Law" means the Beneficial

Ownership of Legal Persons (Guernsey) Law, 2017,

"Guernsey Register of Beneficial Ownership" means the Register established under the Guernsey Beneficial Ownership Law,

"relevant authorities" has the meaning given in paragraph 21(1) of Schedule 3,

"relevant legal person" has the same meaning as in the Guernsey Beneficial Ownership Law, and

"specified business" has the meaning given in paragraph 1(1) of Schedule 3.

(2) The Committee may amend this paragraph by regulation.]

NOTE

Schedule 13 was inserted by the Criminal Justice (Proceeds of Crime) (Access to Beneficial Ownership Information) (Amendment) Ordinance, 2025, section 1(4), Schedule, with effect from 30th April, 2025, subject to the provisions of section 3(2) of the 2025 Ordinance.

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1 Subsection (1) was previously amended by the: Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 1(a), with effect from 24th March, 2010; subsection (2) was previously amended by the: Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010,section 1(b), with effect from 24th March, 2010.

2 Prior to their substitution, the words in square brackets in subsection (1) were previously amended, in part, by the Criminal Justice (Proceeds of Crime) (Bailiwick

of Guernsey) (Amendment) Ordinance, 2010, section 2(a), with effect from 24th March, 2010.

3 Paragraph (b) of subsection (1), paragraph (b) of subsection (2) and paragraph (b) of subsection (3) were previously substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 3(a), section 3(c) and section 3(e), with effect from 24th March, 2010.

4 Prior to its repeal, subsection (6) was amended by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 3(f), with effect from 24th March, 2010.

5 Prior to their repeal, subsection (3) and subsection (4) were amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016; and subsection (6) was amended by the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011, section 36, Schedule, paragraph 1(a), with effect from 25th January, 2012; the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 2, with effect from 28th May, 2014.

6 Prior to their repeal, subsection (3) and subsection (4) were amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016; and subsection (6) was amended by the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011, section 36, Schedule, paragraph 1(b), with effect from 25th January, 2012; the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 3, with effect from 28th May, 2014.

7 These words were previously inserted, in part, by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 3, with effect from 3rd December, 2007.

8 These words were previously inserted, in part, by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 3, with effect from 3rd December, 2007.

9 These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

10 The functions, rights and liabilities of the Policy Council and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

11 Prior to its substitution, the marginal note was amended by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 25, with effect from 3rd December, 2007.

12 Schedule 1 (then the Schedule) was amended by the: Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999, regulation 8, with effect from 1st January, 2000; and substituted by the : Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2002, regulation 1(1), with effect from 28th June, 2002; Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002, regulation 9, with effect from 14th August, 2002; renumbered as "Schedule 1" by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 28(1), with effect from 3rd December, 2007; and substituted by the: Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007, regulation 18(2), with effect from 15th December, 2007; then amended by the: Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 2 and regulation 23(d), with effect from 8th September, 2008; Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008, regulation 1, with effect from 1st December, 2008; Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010, regulation 1, with effect from 22nd February, 2010; Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2013, regulation 1, with effect from 28th March, 2013; Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 1(11), with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

13 Paragraph 2(3)(b) was previously amended by the: Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Fees) (Amendment) Regulations, 2020, regulation 1, with effect from 1st January, 2021; Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Fees) (Amendment) Regulations, 2021, regulation 1, with effect from 1st January, 2022; Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Fees) (Amendment) Regulations, 2022, regulation 1, with effect from 1st January, 2023.

14 For previous amendments, see the Financial Services Commission (Fees and Administrative Financial Penalties) Regulations, 2024, regulation 8 and Schedule 7, with effect from 1st January, 2025.

15 Prior to its substitution, paragraph 19(1) was amended by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, section 1(3), with effect from 25th August, 2023.