

# The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2024

THE STATES, in pursuance of their Resolution of 28<sup>th</sup> September, 2023<sup>a</sup>, and in exercise of the powers conferred on them by sections 81A and 82 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## Amendment of the Law.

1. (1) The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 is amended as set out below.

(2) After section 54 (port and border controls), insert -

*"Power of the Committee to issue directions*

## Committee directions.

54A. Schedule 11 (Committee directions) has effect."

(3) After Schedule 10, insert the Schedule 11 set out in the Schedule to this Ordinance.

## Extent.

2. This Ordinance has effect throughout the Bailiwick.

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<sup>a</sup> Article VI of Billet d'État No. XIV of 2023.

<sup>b</sup> Order in Council No. XVI of 2002; this enactment has been amended.

**Citation.**

3. This Ordinance may be cited as the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2024.

SCHEDULE

Section 1(3)

"SCHEDULE 11  
COMMITTEE DIRECTIONS

Section 54A

**Conditions for giving a direction.**

1. (1) The Committee may, after consultation with the Guernsey Financial Services Commission and the Alderney Gambling Control Commission, give a direction under paragraph 2 if one or more of the following conditions is met in relation to a country or territory outside the Bailiwick.

(2) The first condition is that the international body known as the Financial Action Task Force ("FATF") has advised that measures should be taken in relation to the country or territory because of the risk that there is money laundering or terrorist financing -

- (a) in the country or territory,
- (b) by the government of the country or territory, or
- (c) by persons resident or incorporated in the country or territory.

(3) The second condition is that the Committee reasonably believes that there is a risk that there is money laundering or terrorist financing -

- (a) in the country or territory,
- (b) by the government of the country or territory, or
- (c) by persons resident or incorporated in the country or territory,

and that this poses a significant risk to the interests of the Bailiwick.

(4) The third condition is that FATF has advised that measures should be taken in relation to the country or territory because of the risk that there is-

- (a) the development, production or proliferation of weapons of mass destruction, or their means of delivery, in the country or territory, or
- (b) the doing in the country or territory of anything that facilitates the development, production or proliferation of such weapons,

and for the avoidance of doubt, for these purposes "proliferation" includes financing.

(5) The fourth condition is that the Committee reasonably believes that -

- (a) the development, production or proliferation of weapons of mass destruction, or their means of delivery, in the country or territory, or

- (b) the doing in the country or territory of anything that facilitates the development, production or proliferation of such weapons,

poses a significant risk to the interests of the Bailiwick; and for the avoidance of doubt, for these purposes "proliferation" includes financing.

(6) For the purposes of subparagraphs (3) and (5), a direction given by HM Treasury under paragraph 1(3) or (4) of Schedule 7 to the Counter-Terrorism Act 2008 shall be sufficient for the Committee to form a reasonable belief that there is a significant risk to the interests of the Bailiwick.

**Directions: general.**

2. (1) The Committee may, by order, give a direction to -

- (a) all persons who are within a description of relevant persons,
- (b) all relevant persons, or
- (c) a particular relevant person,

and references to "a relevant person" shall be construed accordingly.

(2) A direction may impose requirements in relation to transactions or business relationships with -

- (a) a person carrying on business in the relevant country or territory outside the Bailiwick,
- (b) the government of that country or territory,
- (c) a person resident or incorporated in that country or territory.

(3) Requirements referred to in subparagraph (2) may be imposed in relation to -

- (a) all persons,
- (b) all persons who are within a description of persons, or
- (c) a particular person,

within that subparagraph.

(4) A direction may make different provision in relation to -

- (a) different descriptions of relevant person,
- (b) different descriptions of designated person, and
- (c) different descriptions of transaction or business relationship.

(5) Descriptions of transactions or business relationships for the purposes of subparagraph (4)(c) may, in particular, include transactions or business relationships of a particular subsidiary, branch or representative office of a relevant person.

**Directions: requirements.**

3. (1) A direction may require a relevant person to undertake enhanced customer due diligence measures -

- (a) before entering into a transaction or business relationship with a designated person, and
- (b) during a business relationship with such a person.

(2) A direction may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a designated person.

(3) A direction imposing a requirement referred to in subparagraph (1) or subparagraph (2) may do either or both of the following -

- (a) impose a general obligation to undertake enhanced customer due diligence measures or enhanced ongoing monitoring (as the case may be), or
- (b) require a relevant person to undertake specific measures identified or described in the direction.

(4) A direction may require a relevant person -

- (a) not to establish a subsidiary, branch or representative office in a specified country or territory,
- (b) to impose increased external audit requirements on subsidiaries, branches or representative offices established in a specified country or territory, or
- (c) otherwise to take into account (either generally, or by way of requiring the relevant person to undertake specific measures identified or described in the direction) that subsidiaries, branches or representative offices established in a specified country or territory are established in a jurisdiction that does not have in place adequate systems to combat relevant activities.

(5) A direction may require a relevant person to provide such information and documents relating to transactions and business relationships with a designated person as may be specified in the direction.

(6) A direction may require a relevant person not to enter into or not to continue to participate in -

- (a) a specified transaction or business relationship with a designated person,
- (b) transactions or business relationships of a specified description with a designated person, or

(c) any transaction or business relationship with a designated person.

(7) A direction may require a relevant person not to rely on a third party in a specified country or territory to undertake any, or any specified, customer due diligence measures on the relevant person's behalf.

(8) A direction imposing a requirement referred to in subparagraph (5) must specify how the direction is to be complied with, including -

(a) the person to whom the information and documents are to be provided, and

(b) the period within which, or intervals at which, information and documents are to be provided.

(9) The requirements imposed by a direction must be proportionate having regard to the advice mentioned in paragraph 1(2) or (4) or, as the case may be, the risk mentioned in paragraph 1(3) or (5) to the interests of the Bailiwick.

**General directions under paragraph 2(1).**

4. (1) This paragraph applies to a direction made under paragraph 2(1)(a) or (b).

(2) The Committee must take such steps as it considers appropriate to bring the making of the direction to the attention of the relevant persons to whom it is given.

(3) The Committee may revoke or amend such a direction by making a further order.

(4) The order containing the direction (if not previously revoked and whether or not amended) ceases to have effect at the end of the period of one year beginning with the day on which it was made.

(5) Subparagraph (4) is without prejudice to the giving of a further order.

(6) When the order is amended or ceases to have effect (whether on revocation or otherwise), the Committee must take such steps as it considers appropriate to publicise that fact.

**Specific directions under paragraph 2(1).**

5. (1) This paragraph applies to a direction given to a particular relevant person under paragraph 2(1)(c).

(2) The Committee must give notice of the direction to the relevant person.

(3) The Committee may revoke or amend such a direction at any time.

(4) A direction (if not previously revoked and whether or not amended) ceases to have effect at the end of the period of one year beginning with the day on which it is given.

(5) Subparagraph (4) is without prejudice to the giving of a further direction.

(6) Where a direction is amended or ceases to have effect (whether on revocation or otherwise), the Committee must give notice of that fact to the relevant person.

**Directions limiting or ceasing business: exemption by licence.**

6. (1) Where a direction contains requirements of a kind mentioned in paragraph 3(4) or 3(6), the Committee may grant a licence to exempt acts specified in the licence from those requirements.

(2) A licence may be -

- (a) general, or granted to all persons who are within a description of persons or to a particular person,
- (b) subject to conditions, and
- (c) of indefinite duration, or subject to an expiry date.

(3) The Committee may amend or revoke a licence at any time.

(4) On the grant, amendment or revocation of a licence, the Committee must -

- (a) in the case of a licence granted to a particular person, give notice of the grant, amendment or revocation to that person, or

- (b) in the case of a general licence or a licence granted to all persons who are within a description of persons, take such steps as the Committee considers appropriate to bring notice of the grant, amendment or revocation to the attention of the persons who are affected by it.

**General right to apply to Court to set aside action, etc of the Committee.**

7. (1) Without prejudice to any specific right of appeal in any enactment, but subject to paragraph 8, a person who is directly affected by any action, direction, or decision of the Committee under this Schedule may apply to the Court to set aside that action, direction, or decision.

(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 Committee,

(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, or decision of the Committee.

(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.

**Committee reliance on HM Treasury direction.**

8. (1) No application under paragraph 7 shall lie to set aside the Committee's decision to give a direction if the Committee certifies that, in giving the direction, the Committee formed a reasonable belief concerning a risk to the interests of the Bailiwick in reliance on a direction given by HM Treasury described in paragraph 1(6).

(2) A certificate under subparagraph (1) shall specify the direction on which the Committee relied.

(3) If the direction specified in accordance with subparagraph (2) -

- (a) is set aside (whether or not on appeal) following proceedings under section 63 of the Counter-Terrorism Act 2008,
- (b) ceases to have effect under paragraph 15(3), or is contained in an order which ceases to have effect under paragraph 16(4), of Schedule 7 to that Act, or
- (c) is revoked under paragraph 15(4) of Schedule 7 to that Act or is contained in an order which was revoked in accordance with paragraph 16(3) of Schedule 7 to that Act,

the Committee's direction given in reliance on that direction given by HM Treasury shall be deemed to be revoked on the date that the decision to set aside takes effect or the direction ceases to have effect or is revoked or the order containing the direction ceases to have effect or is revoked, as the case may be.

(4) If, to the Committee's knowledge, the direction specified in accordance with subparagraph (2) is varied in a material particular, or the order containing the direction is varied in a material particular, subparagraph (1) shall not apply unless the direction made by the Committee has been amended to achieve an equivalent effect.

**Rules of court, disclosure and special counsel.**

9. The provisions of any Ordinance made under section 25 of the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011 shall have effect in relation to any proceedings, and any appeal relating to proceedings, under paragraph 7, as if they were proceedings under that Law.

**Disclosure of information.**

10. Information may be disclosed by the Committee or any other person for the purpose of -

- (a) enabling or facilitating the exercise of the Committee's functions under this Schedule, or
- (b) complying with any requirement under paragraph 3,

notwithstanding any restriction on such disclosure, whether imposed by statute or otherwise, and such disclosure shall not give rise to any cause of action in any proceedings.

**Offences.**

11. (1) A person who, without reasonable excuse, fails to comply with a requirement imposed by a direction shall be guilty of an offence.

(2) In deciding whether a person has committed an offence under subparagraph (1), the court may take into account whether the person followed any relevant guidance or code of practice that was at the time issued by the Guernsey Financial Services Commission or the Alderney Gambling Control Commission.

(3) A person to whom a direction is given who intentionally participates in activities knowing that the object or effect of them is (whether directly or indirectly) to circumvent a requirement imposed by the direction shall be guilty of an offence.

(4) A person who, for the purpose of obtaining a licence under paragraph 6 -

(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,

is guilty of an offence.

(5) A person guilty of an offence under this paragraph is liable on conviction to a fine, to imprisonment for a term not exceeding seven years, or to both.

(6) A person may commit an offence under this Schedule by conduct wholly or partly outside the Bailiwick.

(7) Nothing in subparagraph (6) affects any criminal liability arising otherwise than under that subparagraph.

**Service of notices and documents.**

12. (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 item (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,

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 Committee, 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).

**Legal professional privilege and protection from self-incrimination unaffected.**

13. For the avoidance of doubt, nothing in this Schedule limits a right to decline to produce or deliver documents or other information on the ground of -

- (a) legal professional privilege, or
- (b) any rule against self-incrimination.

**Interpretation: general.**

14. (1) In this Schedule unless the context otherwise requires -

"**beneficial owner**" has the meaning given in paragraph 22 of Schedule 3 to the Proceeds of Crime Law,

"**business relationship**" means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration,

"**the Court**" means the Royal Court sitting as an Ordinary Court, which shall be properly constituted if it consists of the Bailiff sitting unaccompanied by the Jurats, and which may, where it consists of the Bailiff

so sitting, sit in chambers,

"**customer due diligence measures**" means the steps required to be undertaken by a specified business under subparagraphs (3) to (7) of paragraph 4 of Schedule 3 to the Proceeds of Crime Law,

"**designated person**" means a person or government described in paragraph 2(2) in relation to whom a direction is given,

"**direction**" means a direction given by the Committee under paragraph 2,

"**enhanced customer due diligence measures**" has the meaning given in subparagraph (3)(a) of paragraph 5 of Schedule 3 to the Proceeds of Crime Law,

"**FATF**": see paragraph 1(2),

"**HM Treasury**" means the Commissioners of His Majesty's Treasury,

"**nuclear weapon**" includes a nuclear explosive device that is not intended for use as a weapon,

"**one-off transaction**" means a transaction which is not part of a business relationship,

"**ongoing monitoring**" of a business relationship means -

- (a) keeping up to date information and documents obtained for the purposes of customer due diligence measures, and
- (b) scrutinising transactions undertaken during the course of the relationship (and, where appropriate, the source of funds for those transactions) to ascertain whether the transactions are consistent with the relevant person's knowledge of the designated person and their business,

"**the Proceeds of Crime Law**" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"**radiological weapon**" means a device designed to cause destruction, damage or injury by means of the radiation produced by decay of radioactive material,

"**relevant activities**" means money laundering, terrorist financing, or the development, production or proliferation of weapons of mass destruction,

"**relevant person**" means a financial services business, or a specified business within the meaning of Schedule 3 to the Proceeds of Crime Law,

"**transaction**" means a one-off transaction or a transaction in the course of a business relationship, and for the avoidance of doubt includes the provision of advice, and

"**weapons of mass destruction**" include nuclear, radiological, biological and chemical weapons.

(2) In this Schedule, a transaction or business relationship with a designated person includes any transaction or business relationship between the relevant person and -

(a) any person acting on behalf of, or at the direction of, the designated person, and

(b) any person in relation to whom the designated person is -

(i) a beneficial owner, or

(ii) a holding body,

regardless of whether or not the designated person is directly involved in such transaction or business relationship.

**Interpretation: meaning of holding body.**

15. (1) A body corporate is the holding body of another body corporate if the second body is a subsidiary of the first body.

(2) For the purposes of subparagraph (1), a body corporate is a subsidiary of another body corporate if the second body -

(a) holds a majority of the voting rights in the first body,

- (b) is a member of the first body and has the right to appoint or remove a majority of the board of directors of the first body, or
- (c) is a member of the first body and controls alone, or pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first body,

or if the first body is a subsidiary of a body corporate which is itself a subsidiary of the second body."