



LICENCES IN RESPECT OF FINANCIAL SANCTIONS – A GUIDE

A licence is a written authorisation for a transaction or other form of activity that would otherwise be prohibited by a financial sanctions regime. In the Bailiwick, the relevant licensing authority is the Policy & Resources Committee, other than for a small number of Orders in Council where the licensing authority is HM Procureur. All applications for licences should be directed to the Regulatory and Financial Crime Policy Team of the Policy & Resources Committee in the first instance and for ease of reference this guidance will treat the Policy & Resources Committee as the sole licensing authority.

Availability of Licences

The scope of the power to issue a licence differs between the various financial sanctions regimes and will depend on the wording of the legislation implementing the regime in question. All persons who wish to apply for licences are advised as a first step to consider whether their case comes within the licensing grounds that are included in the relevant financial sanctions regime.

The Policy & Resources Committee's power to issue a licence under the Terrorist Asset Freezing (Bailiwick of Guernsey) Law 2011 is unlimited. The same is generally true of the power to issue a licence under an Order in Council.

In the case of sanctions regimes that are implemented by an Ordinance giving domestic effect to an EU Regulation, the Policy & Resources Committee is unable to issue a licence that is not capable of being authorised under any of the prescribed licensing grounds in the EU Regulation. In general, licenses may be issued under an EU Regulation at the discretion of the Policy & Resources Committee if it has determined that access to frozen funds, economic resources or financial services as the case may be is necessary for one or other of certain specified reasons, which are broadly as follows:

1. Payment of basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges,
2. Payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services

3. Payment of fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources
4. Payment of extraordinary expenses
5. Payment to satisfy an arbitral, administrative or judicial decision
6. Payment due under a pre-existing contract, agreement or obligation

Applications for Licences

Any person may apply for a licence to permit the release of all or part of the frozen funds, or the provision of financial assistance, whether for the benefit of himself or for any other party. The application should be made in writing to the Policy & Resources Committee by email or post and should include full details of the following matters:

- the identity of the person making the application or on whose behalf the application is being made;
- the basis on which it is claimed that the person for whose benefit the application is being made has ownership of or other entitlement to any frozen funds;
- the grounds on which a licence is requested;
- if a licence is sought on the first ground listed above, the nature of the expenses in respect of which the application is being made, a full breakdown of those expenses and the current financial circumstances of the person for whose benefit the application is being made;
- the precise amount in respect of which a licence is sought;
- if a licence is sought for ongoing expenditure, fees or charges, the length of time for which the licence is sought.

The application should be supported by all relevant independent documentation, such as documents verifying identity, bank statements, medical certificates, utility bills, contracts, and judgements. An application which is not supported by the necessary independent documentation is unlikely to succeed.

Any person who, for the purposes of obtaining a licence, knowingly or recklessly makes a false statement or furnishes any document or information that is false in a material particular is committing a criminal offence.

The Policy & Resources Committee may consult the law enforcement agencies of the Bailiwick, HM Procureur, the Guernsey Financial Services Commission and any other party

whether in the Bailiwick or otherwise as it considers necessary to deal with licence applications. Further information may also be requested from the applicant for a licence.

The Policy & Resources Committee will make a determination on all requests within 28 days, providing that all necessary information and documents have been received, either from the applicant or from any third party. In the event that further information or documents are necessary, a determination will be made within 28 days of receipt of the necessary information or documents. In cases of urgency, the Policy & Resources Committee will take all reasonable steps to make an earlier determination.

Policy & Resources Committee licences include the Policy & Resources Committee logo, and are numbered, dated and signed. They are issued electronically in PDF format. A licence may be granted for an unlimited period or may be limited so as to expire on a specified date unless renewed. A licence may be unconditional or may be subject to conditions. A breach of those conditions is a criminal offence.

A licence issued by the Policy & Resources Committee does not cover activities in other jurisdictions. It may therefore be necessary, depending on the activity being licensed, to apply to the authorities in another jurisdiction for a separate licence from them.

Changes to licences

The Policy & Resources Committee may amend a licence where circumstances change or new transactions are contemplated. Where a licence amendment is sought, the applicant should set out the need for a change and the basis on which it is sought. The Policy & Resources Committee will make a determination on a request to amend a licence within 28 days, providing that all necessary information and documents have been received, either from the applicant or from any third party. In the event that further information or documents are necessary, a determination will be made within 28 days of receipt of the necessary information or documents. In cases of urgency, the Policy & Resources Committee will take all reasonable steps to make an earlier determination.

Delisting

Where a licence has been issued by the Policy & Resources Committee to allow a business to deal with a designated person and that designated person is then delisted, the licence will expire. Businesses should retain a copy of the licence in order to deal with any subsequent enquiries about the basis on which any transaction took place during the period in which sanctions applied.

Notification to the United Nations

In cases that involve a person designated under a United Nations financial sanctions regime, there is usually an additional requirement to notify the relevant United Nations Sanctions Committee before granting a licence, and in such cases the licence may only be granted if the Sanctions Committee has not objected within a specified time period (usually three working days). Examples of this include the financial sanctions regimes relating to Al-Qaida and the Taliban, implemented in the Bailiwick respectively by the Al-Qaida (Restrictive Measures) (Guernsey) Ordinance 2013, the Afghanistan (Restrictive Measures) (Guernsey) Ordinance 2011 and the corresponding Ordinances for Alderney and Sark. Under Bailiwick legislation, notifications by the Policy & Resources Committee are to be made to the authorities in the UK in the first instance.

Appeals against licensing decisions

The Policy & Resources Committee will usually provide an explanation for any decision to refuse a licence. There is a right of appeal to the Royal Court against any decision made by the Policy & Resources Committee in its capacity as the licensing authority. This right is available to any person who is aggrieved by a licensing decision, not just by a designated person. An appeal may be made on one or more of the following grounds:

- the decision was ultra vires or there was some other error of law
- the decision was unreasonable
- the decision was made in bad faith
- there was a lack of proportionality
- there was a material error as to the facts or as to the procedure.

Queries

Any queries should be sent to:

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