



ADVISORY MEMORANDUM

THE SANCTIONS (BAILIWICK OF GUERNSEY) LAW, 2018

INTRODUCTION

1. The [Sanctions \(Bailiwick of Guernsey\) Law, 2018](#) (the Sanctions Law) has four broad purposes. These are to:
 - enable the swift implementation of sanctions measures on a Bailiwick-wide basis;
 - put in place measures to address the period between a designation being made by the United Nations (UN) and its adoption by a sanctions regime that has been implemented in the Bailiwick;
 - enhance reporting obligations and information-gathering powers to facilitate compliance with sanctions measures and the understanding of the risks to the jurisdiction in this area;
 - put in place the necessary legal basis for dealing with sanctions after Brexit.

IMPLEMENTATION

2. The Sanctions Law gives the Policy & Resources Committee of the States of Guernsey the power to enact regulations to implement sanctions measures, and also to repeal existing sanctions legislation as necessary. Sanctions measures are defined as measures enacted by the UN, the European Union (EU) or the UK. With regard to UK sanctions, these are measures that may be made under legislation which the UK has introduced to govern the situation after Brexit (see below for further details).
3. Regulations under the Sanctions Act will apply across the Bailiwick as a whole, instead of there being, as now, three separate but identical regimes for Guernsey, Alderney and Sark. This Bailiwick-wide approach, coupled with the fact that regulations may be made more quickly than Ordinances, will enhance the Bailiwick's ability to react swiftly to international developments in this area.
4. At the same time, in recognition of the fact that regulations may face less parliamentary scrutiny than other forms of legislation, matters that relate to enforcement (i.e. offences and penalties for breach, reporting obligations, information gathering and investigatory powers) have been dealt with on the face of the Sanctions Law itself rather than leaving these matters to be dealt with in the regulations that are made under it. The Sanctions Law also provides for the issue of guidance by the Policy & Resources Committee.

APPLICATION OF UN MEASURES

5. Currently, there is no power under Bailiwick law to give effect to any UN targeted financial sanctions measures until they have been adopted by the EU. This applies both

to additions to UN listings under existing UN sanctions regimes where there is a corresponding EU regime in place, and to new UN sanctions regimes where no corresponding EU regime has yet been introduced. Under the Sanctions Law, both of these gaps have been closed.

6. Additions to UN listings where there is a corresponding EU regime in place that has been implemented in the Bailiwick are now automatically effective in the Bailiwick for 30 days or until being adopted by the EU, whichever is the sooner.
7. Parties listed under UK temporary regulations that give effect to new UN regimes are subject to asset freezing measures set out in the Sanctions Law until the expiry of the relevant UK temporary regulations or the introduction of regulations in the Bailiwick to implement the new UN regime, whichever is the sooner.
8. The Sanctions Law also provides for future amendments with regard to temporary implementation of UN measures so as to reflect the UK position on this after Brexit.

REPORTING OBLIGATIONS AND INFORMATION-GATHERING

9. There are reporting obligations under the Sanctions Law that are applicable to relevant institutions. These obligations are similar to the reporting obligations currently applicable to financial services businesses under a small number of UN regimes. However, they are wider than the existing obligations under most individual sanctions regimes, in that they apply not just to possible breaches but also to knowledge or reasonable grounds for suspicion that a person is, or is linked to, a sanctioned person, irrespective of whether or not a particular activity involving that person is subject to sanctions. This will assist the jurisdiction in assessing risks to the jurisdiction at both a general and at a transaction-specific level.
10. It is important to note that the reporting obligations apply not just to sanctions regimes that are implemented by regulations under the Sanctions Law, but also to regimes that have already been implemented in the jurisdiction by Ordinance or by Order in Council.
11. The reporting obligations are underpinned by information-gathering powers for the Policy & Resources Committee that may be used for matters such as assessing risk, in addition to the range of purposes already in place under existing sanctions legislation.
12. These measures have also been applied to terrorist asset freezing cases under the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011 (the 2011 Law), to ensure consistency across the legal framework.
13. Guidance on the reporting obligations in the Sanctions Law is available on the States of Guernsey website at <http://www.gov.gg/sanctions>.

BREXIT

14. The UK has introduced the Sanctions and Anti-Money Laundering Act 2018 (the SAML Act), which will enable it to give effect to UN sanctions and to enact its own autonomous sanctions regimes after Brexit. The Sanctions Law puts in place the necessary powers to implement UK sanctions after Brexit, by including measures enacted under the SAML Act in the definition of sanctions measures which the Policy & Resources Committee may implement by regulations.
15. While the UK remains an EU member state, the regulation-making process under the Sanctions Law will be used to give effect to EU sanctions measures, i.e. it will replace the current practice of giving effect to such measures by Ordinance. As this is simply a change to the legal basis for the domestic implementation of EU measures, it will not result in any difference to the measures themselves, subject to the changes in reporting obligations etc. under the Sanctions Law outlined above. After Brexit, the regulation-making process under the Sanctions Law will be used to give effect to UK sanctions regimes under the SAML Act.
16. With regard to the 2011 Law, the definition of designated person (which includes persons designated under the Terrorist Asset Freezing etc. Act, 2010) has been extended to any person designated under regulations on terrorist asset freezing made under the SAML Act.
17. This approach will ensure that the Bailiwick's sanctions regime continues to mirror that in the UK. This reflects the constitutional position, and will also assist businesses whose activities or business relationships mean that they have to comply with the sanctions regimes of both jurisdictions.