

GUIDANCE ON THE REPORTING OBLIGATIONS UNDER THE SANCTIONS (BAILIWICK OF GUERNSEY) LAW, 2018

INTRODUCTION

1. This guidance is issued by the Policy & Resources Committee in the exercise of its powers under section 30 of the Sanctions (Bailiwick of Guernsey) Law, 2018 (the Sanctions Law). It takes the form of FAQs which are intended to assist businesses in meeting the reporting obligations at section 14 of the Sanctions Law.¹

It is important to be aware that there are also reporting obligations applicable to specific sanctions regimes that have been implemented in the Bailiwick. These reporting obligations are not dealt with under this guidance but further information about them is available on the regime – specific information available on the States of Guernsey website.

2. The reporting obligations at section 14 are very similar to reporting obligations for financial services businesses that previously existed under a small number of UN sanctions regimes, and they are also in line with some aspects of the generally applicable reporting obligations which have been in place for several years in respect of money laundering and terrorist financing. In addition, it is the longstanding experience of the Policy & Resources Committee (and its predecessor the Policy Council) that most businesses routinely alert it about business relationships or transactions with any sanctions link, so section 14 simply formalises what is already happening in practice to a very large extent. For these reasons, it is expected that the guidance will primarily be of assistance to parties that are less familiar with reporting etc. issues (e.g. newly established businesses, or individuals who have only recently taken on a relevant role within an established business).
3. The guidance is not determinative of questions of law and it is recommended that, where necessary, independent legal advice is sought.
4. General information about the implementation of Guernsey's sanction regime is provided at: www.gov.gg/sanctions.

Who must comply with the reporting obligations?

¹ The guidance is also relevant to section 17 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law 2011, which contains an identical reporting obligation in relation to persons who are designated under that Law.

5. The reporting obligations apply to relevant institutions. This means persons (whether individuals or entities) carrying out any of the following types of business from the Bailiwick;
 - financial services business, as defined in Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
 - estate agency, legal or accountancy business or dealing in high value goods, as defined in Schedule 2 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
 - business carried out under an eGambling licence or certificate, as defined in the Alderney eGambling Ordinance, 2009.

What is covered by the reporting obligations?

6. It is important to be aware that the reporting obligations do not just cover the situation where there is reason to believe that a sanctions breach has been committed. As well as covering knowledge or reasonable grounds to suspect that an individual or entity has committed an offence, the reporting obligations cover knowledge or suspicion that an individual or entity is a sanctioned person or that an individual or entity is linked to a sanctioned person. This means that the fact that a person is sanctioned or is linked to a sanctioned person must be reported, irrespective of whether or not any activity that might involve a sanctions breach has taken place or is under consideration.

The reason for this is to assist the authorities in assessing risks to the jurisdiction that may arise from business relationships or other connections with sanctioned persons.

What is meant by a sanctioned person or being linked to a sanctioned person?

7. A sanctioned person is somebody who has been listed under any sanctions measure that has been implemented in the Bailiwick, whether the implementation in the Bailiwick is open –ended or temporary.

Being linked to a sanctioned person means being wholly or jointly and directly or indirectly owned, held or controlled by a sanctioned person, or acting on behalf of a sanctioned person or at the direction of a sanctioned person. This is widely cast to capture situations where sanctioned persons use other parties as middlemen to distance themselves from particular activities or assets.

Does a report only have to be made in relation to clients?

8. Although the reporting obligations only apply to knowledge or reasonable cause for suspicion about a person that a relevant institution acquires in the course of carrying on its business, this is not confined to situations where the person in question is a client of the relevant institution. A report should therefore be made for example

where a relevant institution knows or suspects that a sanctioned person is a beneficial owner, underlying investor, close associate etc. of one of its clients.

Where should reports be sent and what information should they contain?

9. Reports should be made to the Policy & Resources Committee using the email address on the website above. Every report should be accompanied by details of the information on which the knowledge or reasonable cause for suspicion is based, and any information the reporting party holds by which the person in question can be identified. Where the person who is the subject of the report is a client of the reporting party, the report should also give details of the nature and extent of any assets that the reporting party held for that person at the point when the knowledge or suspicion arose.

Should a report also be made to the Financial Intelligence Unit?

10. A report need only be made to the Financial Intelligence Unit in circumstances where there is a possible money laundering, terrorist financing, proliferation or proliferation financing link in addition to a sanctions link. In those situations, separate reports should be made to the Financial Intelligence Service and to the Policy & Resources Committee.

Are there any tipping off provisions that apply?

11. There are no tipping off provisions in the Sanctions Law. This is because designations are in the public domain. However, if a case also involves potential money laundering, terrorist financing, proliferation or proliferation financing it will almost certainly come within the tipping off provisions at section 4 of the Disclosure (Bailiwick of Guernsey) Law 2007 or section 40 of the Terrorism and Crime (Bailiwick of Guernsey) Law 2002, as the case may be.