

BILLET D'ÉTAT No. XXI, 2006

13th December, 2006

	<i>Page</i>
Projet de Loi entitled “The Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006”	1
Projet de Loi entitled “The Social Insurance (Guernsey) (Amendment) Law, 2006”	22
The Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2006	30
 <i>Ordinance laid before the States</i> 	
The Lebanon (Restrictive Measures) (Guernsey) Ordinance, 2006	32

PROJET DE LOI

ENTITLED

The Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006

ARRANGEMENT OF SECTIONS

Community service orders

1. Community service orders.
2. Making of a community service order.
3. Requirements of a community service order.

Variation of order

4. Variation or revocation of community service order due to change in circumstances.

Breach of order

5. Breach of community service order.
6. Breach - disposal by Magistrate's Court.
7. Breach - disposal by Royal Court.

Powers on further conviction

8. Powers on further conviction by Magistrate's Court when existing Magistrate's Court order.
9. Powers on further conviction by Magistrate's Court when existing Royal Court order.
10. Disposal by Royal Court following order by Magistrate's Court under s9(2)(c) and (3)(b).
11. Powers on further conviction by Royal Court when existing Royal Court order.

Supplemental provisions

12. Supplemental provisions.

General

13. Designated person.
14. Power to amend Law by Ordinance and provisions relating to Ordinances and regulations.
15. Interpretation.
16. Citation and commencement.

PROJET DE LOI

ENTITLED

The Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006

THE STATES, in pursuance of their Resolution of the 30th November, 2005^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have the force of law in the Bailiwick of Guernsey.

Community service orders

Community service orders.

1. (1) Where a person aged 16 or over is convicted of an offence punishable with imprisonment, the court by or before which he is convicted may, instead of dealing with him in any other way make a community service order.

(2) A person who is made the subject of a community service order is required to perform unpaid work in accordance with this Law.

(3) The number of hours which a person may be required to work under a community service order shall be specified in the order and shall be in the aggregate not less than 40 and not more than -

(a) where the order is made by the Magistrate's Court,

^a Article XII of Billet d'État No. XX of 2005.

180, and

(b) where made by the Royal Court, 240.

(4) Where the court makes community service orders in respect of two or more offences, it may direct that the number of hours of work specified in each order shall be concurrent with or additional to those specified in any other of those orders, but so that the aggregate number of hours which are not concurrent shall not exceed the maximum described in subsection (3).

Making of a community service order.

2. (1) A court considering making a community service order shall obtain and consider a written or verbal report from a probation officer or a designated person upon -

- (a) the offender and his relevant circumstances,
- (b) the suitability of the offender to perform community service, and
- (c) the availability of community service.

(2) A court may not make a community service order unless it is of the opinion such an order is justified due to either -

- (a) the seriousness of the offence or combination of offences, or
- (b) the combination with the offence or offences of any previous convictions recorded against the offender.

(3) The court may impose a community service order as an alternative to a sentence of imprisonment or youth detention.

(4) If a community service order is made as an alternative to a sentence of imprisonment or youth detention, the court must -

- (a) inform the offender of this fact at the time the order is made,
- (b) inform the offender the sentence of imprisonment or youth detention which it was considering passing, and
- (c) ensure that a note of (a) and (b) is included in the order.

(5) Before making a community service order, the court shall be satisfied that a probation officer or a designated person has explained to the offender in plain language and the offender has understood -

- (a) the purpose and effect of the order and, in particular, the requirements described in section 3(1),
- (b) the power of the court under section 4 to review the order on the application of either the offender or the relevant officer, and
- (c) the consequences which may follow if he fails to comply with any of the requirements of the order, or if he is convicted of a further offence while the order

is in force.

(6) A court shall not make a community service order in respect of an offender unless it is satisfied -

- (a) that provision can be made for the offender to perform work, and
- (b) after considering the report described in subsection (1), that the offender is a suitable person to perform work under such an order.

(7) The court shall as soon as practicable provide the offender and a probation officer or designated person with a copy of the order.

(8) Where a community service order is made, the Chief Probation Officer shall assign a probation officer or a designated person to be the relevant officer in relation to it.

Requirements of a community service order.

3. (1) An offender in respect of whom a community service order is in force shall -

- (a) keep in contact with the relevant officer in accordance with such instructions as he may from time to time be given by that officer,
- (b) notify the relevant officer of any change of address or working arrangements,

- (c) perform, to the satisfaction of the relevant officer and for the number of hours specified in the order, such work at such times as he may be instructed by the officer,
- (d) behave in a reasonable, orderly and decent manner while present at the place designated for the performance of work or under the instruction of the relevant officer, and
- (e) only be absent from any work or appointments designated by the relevant officer if he has an explanation acceptable to or written permission from the relevant officer.

(2) The work required under a community service order should be performed within 12 months of the date the order was made.

(3) Notwithstanding subsection (2), a community service order shall remain in force until the offender has worked under it for the number of hours specified or until it is revoked.

(4) The instructions to be given by the relevant officer under subsection (1) shall, as far as practicable, be such as to avoid any conflict with the offender's religious beliefs or any exceptional commitments and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

(5) The Home Department may by regulations provide for such matters it deems appropriate in connection with the performance of community

service orders.

Variation of order

Variation or revocation of community service order due to change in circumstances.

4. (1) Where a community service order is in force in respect of any offender and, on the application of the offender or the relevant officer, it appears to the court that made the order that it would be in the interests of justice to do so having regard to the circumstances which have arisen since the order was made, the court may -

- (a) revoke the order, or
- (b) revoke the order and deal with the offender for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.

(2) Where a court proposes to consider exercising its powers under subsection (1) otherwise than on the application of the offender, the court may either direct the offender to appear before it on a date and at a time specified, or issue a warrant.

Breach of order

Breach of community service order.

5. (1) If at any time while a community service order is in force, it appears to the relevant officer that the offender has failed to comply with any of the requirements of section 3(1), the officer may inform the Magistrate's Court that a

breach of the order may have occurred.

(2) On receipt of information under subsection (1) the Magistrate's Court may either issue a summons requiring the offender to appear before it on a date and at a time specified therein, or issue a warrant.

(3) Prior to the appearance of the offender before the Magistrate's Court, the relevant officer shall, if possible, inform the offender of the facts of the alleged breach of a requirement of section 3(1).

(4) If the offender admits that he is in breach of a requirement of section 3(1), the facts concerning the breach may be presented to the Magistrate's Court by the relevant officer who may also make written or oral representations concerning the disposal of the case.

(5) If the offender does not admit to a breach of any of the requirements of section 3(1), the Magistrate's Court shall hear evidence to determine whether any breach occurred .

(6) If -

- (a) the offender admits that he has breached a requirement of section 3(1), or
- (b) it is proved to the satisfaction of the Magistrate's Court that the offender has breached a requirement of section 3(1),

the court shall proceed in one of the ways described in section 6.

Breach - disposal by Magistrate's Court.

6. (1) If the order which is the subject of proceedings under section 5 was made by the Magistrate's Court, that court may -

(a) order that the order continue (with or without variation) without any fine,

(b) order that -

(i) the order continue (with or without variation),
and

(ii) the offender pay a fine not exceeding level 4 on the uniform scale,

(c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or

(d) revoke the order.

(2) If the order which is the subject of proceedings under section 5 was made by the Royal Court, the Magistrate's Court may -

(a) order that the order continue without any fine,

(b) order that -

(i) the order continue, and

(ii) the offender pay a fine not exceeding level 4 on the uniform scale, or

(c) order that the offender appear before the Royal Court on a date and at a time specified in the order.

(3) If the Magistrate's Court acts under subsection (1)(c), it may not sentence the offender to a period of imprisonment or youth detention unless -

(a) at the time the community service order was imposed the requirements of section 2(4) were met, or

(b) in the opinion of the court the offender has wilfully or persistently failed to comply with the requirements of section 3(1).

(4) If the Magistrate's Court hears evidence and decides that the offender has breached a requirement of section 3(1) and the court makes an order under subsection (2)(c), the court shall provide the Royal Court, the offender and the relevant officer with a note of the facts found by it.

(5) If the Magistrate's Court makes an order under subsection (2)(c), it shall remand the offender in custody or on bail.

Breach - disposal by Royal Court.

7. (1) When an offender appears before the Royal Court as a result of an order made under section 6(2)(c) the court may -

(a) order that the order continue (with or without

variation) without any fine,

- (b) order that -
 - (i) the order continue (with or without variation),
and
 - (ii) the offender pay a fine,
- (c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or
- (d) revoke the order.

(2) If the Royal Court acts under subsection (1)(c), it may not sentence the offender to a period of imprisonment or youth detention unless -

- (a) at the time the community service order was imposed the requirements of section 2(4) were met, or
- (b) in the opinion of the court the offender has wilfully or persistently failed to comply with the requirements of section 3(1).

Powers on further conviction by Magistrate's Court when existing Magistrate's Court order.

8. (1) When an offender in respect of whom a community service order made by the Magistrate's Court has not been satisfied, is convicted of a

further offence by that court, he may be dealt with, as far as the order is concerned, in accordance with subsection (2).

- (2) The Magistrate's Court may -
 - (a) order that the order continue (with or without variation) without any fine,
 - (b) order that -
 - (i) the order continue (with or without variation), and
 - (ii) the offender pay a fine not exceeding level 4 on the uniform scale,
 - (c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or
 - (d) revoke the order.

Powers on further conviction by Magistrate's Court when existing Royal Court Order.

9. (1) When an offender in respect of whom a community service order made by the Royal Court has not been satisfied, is convicted of a further offence by the Magistrate's Court, he may be dealt with, as far as the order is concerned, in accordance with subsection (2).

- (2) The Magistrates Court may -
 - (a) order that the order continue without any fine,
 - (b) order that -
 - (i) the order continue, and
 - (ii) the offender pay a fine not exceeding level 4 on the uniform scale, or
 - (c) order that the offender appear before the Royal Court on a date and at a time specified in the order.

(3) If the Magistrate's Court makes an order under subsection (2)(c) the court shall -

- (a) remand the offender in custody or on bail, and
- (b) order that the sentence for the further offence be determined by the Royal Court.

Disposal by Royal Court following order by Magistrate's Court under s. 9(2)(c) and (3)(b).

10. (1) When the offender appears before the Royal Court pursuant to an order made under section 9(2)(c), he may be dealt with as far as the order is concerned, in accordance with subsection (2).

(2) The Royal Court may -

- (a) order that the order continue (with or without variation) without any fine,
- (b) order that -
 - (i) the order continue (with or without variation), and
 - (ii) the offender pay a fine,
- (c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or
- (d) revoke the order.

(3) If an order is made under section 9(3)(b), the Royal Court may not impose a greater penalty for the further offence than the maximum that may have been imposed by the Magistrate's Court.

(4) The Royal Court shall also deal with any other sentences or other orders of the Magistrate's Court of which the offender is in breach as a result of the commission of the offence for which he is to be sentenced pursuant to an order under section 9(3)(b).

Powers on further conviction by Royal Court when existing Royal Court Order.

11. (1) When an offender in respect of whom a community service order made by the Royal Court has not been satisfied, is convicted of a further

offence by that court, he may be dealt with, as far as the order is concerned, in accordance with subsection (2).

- (2) The Royal Court may -
 - (a) order that the order continue (with or without variation) without any fine,
 - (b) order that -
 - (i) the order continue (with or without variation), and
 - (ii) the offender pay a fine,
 - (c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or
 - (d) revoke the order.

Supplemental provisions

Supplemental provisions.

12. (1) The variations which may be made under section 6(1)(a), 6(1)(b)(i), 7(1)(a), 7(1)(b)(i), 8(2)(a), 8(2)(b)(i), 10(2)(a), 10(2)(b)(i), 11(2)(a) or 11(2)(b)(i) include, subject to section 1(3), an increase or decrease in the number of hours for which the offender is required to work by a maximum of 60.

(2) A fine imposed under section 6(1)(b)(ii), 6(2)(b)(ii), 7(1)(b)(ii), 8(2)(b)(ii), 9(2)(b)(ii), 10(2)(b)(ii) or 11(2)(b)(ii) shall be deemed for the purposes of any enactment to be a sum adjudged to be paid on a conviction.

(3) A community service order made by the Court of Appeal or by the Royal Court on any appeal shall have the same effect and be enforced as if it had been made by the court from which the appeal was made and any reference in this Law to the court which made the order shall be construed accordingly.

General

Designated person.

13. The Chief Probation Officer may designate such persons, in addition to probation officers, as he thinks fit to prepare reports, give explanations and act as relevant officers for the purposes of this Law.

Power to amend Law by Ordinance and provisions relating to Ordinances and regulations..

14. (1) The States may by Ordinance amend this Law.
- (2) An Ordinance under subsection (1) may, for the avoidance of doubt -
- (a) create new offences, and
 - (b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.
- (3) An Ordinance or regulations made under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or regulations hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

(4) Any power conferred by this Law to make an Ordinance or regulations 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.

(5) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the regulations they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Interpretation.

15. (1) In this Law -

"the Bailiwick" means the Bailiwick of Guernsey,

"Chief Probation Officer" means the person employed in that capacity by the States Home Department,

"Court of Appeal" means the court established by the Court of Appeal (Guernsey) Law, 1961^b,

"designated person" means a person designated pursuant to section 13,

"Home Department" means the States Home Department,

"Magistrate's Court" means -

(a) in Alderney, the Court of Alderney,

(b) in Guernsey, the Magistrate's Court established by section 1 of the Magistrate's Court (Guernsey) Law,

^b Ordres en Conseil Vol. XVIII, p. 315.

1954^c, and

(c) in Sark, the Court of the Seneschal,

"offender" means a person in respect of whom a community service order is or may be made,

"probation officer" means a person employed in that capacity by the States Home Department,

"relevant officer" means, in relation to a community service order, the person so assigned pursuant to section 2(8),

"Royal Court" means the Royal Court of Guernsey,

"States" means the States of Guernsey,

"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^d, and

"youth detention" means a custodial sentence which is one of youth detention under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990^e.

^c Ordres en Conseil Vol. XVI, p.103.

^d Ordres en Conseil Vol. XXXI, p.278

^e Ordres en Conseil Vol. XXXII, p. 106.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^f apply to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification) extended or applied.

Citation and commencement.

16. (1) This Law may be cited as the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006.

(2) This Law shall come into force on a day specified by regulations made by the Home Department.

^f Ordres en Conseil Vol. XIII, p. 355.

PROJET DE LOI

ENTITLED

The Social Insurance (Guernsey) (Amendment) Law, 2006

THE STATES, in pursuance of their Resolutions of the 28th September 2005^a, 30th June 2006^b and 28th September 2006^c, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

Amendment of Law of 1978.

1. (1) In the Arrangement of Sections -
 - (a) immediately following the reference to section 16 ("Persons to be treated as employers."), insert -

"Anti- avoidance

- 16A. General provision against avoidance.
- 16B. Contributions payable in proportion to total amount of income or earnings.
- 16C. Power to make regulations, directions and orders concerning avoidance.
- 16D. Provisions of sections 16A to 16C without prejudice to other

^a Resolution 4 of Article XVI of Billet d'État No. XIV of 2005.

^b Resolution 9 (as amended) of Billet d'État No. XI of 2006.

^c Resolution 6 of Article XVI of Billet d'État No. XVI of 2006.

provisions of Law.", and

- (b) immediately before the reference to section 116 ("General provisions as to Ordinances, orders and regulations."), insert -

"115A. Power to amend Law by Ordinance."

(2) In section 4(1)(b) of the Law of 1978, the words "and under section seven of this Law by employed persons in certain cases" are repealed.

- (3) Immediately after section 5(1) of the Law of 1978, insert -

"(1A) An Ordinance under subsection (1) may prescribe different relevant upper earnings limits for the purpose of primary and secondary Class 1 contributions."

- (4) Section 7 of the Law of 1978 is repealed.

- (5) Immediately after section 16 of the Law of 1978, insert -

"Anti-avoidance

General provision against legal avoidance.

16A. (1) Where the effect of a transaction or series of transactions is the avoidance, reduction or deferral of the liability of any person ("**the person concerned**") to pay contributions, the Department may, in its discretion, make such adjustments as respects the liability of the person concerned to pay such contributions as may in its opinion be appropriate to counteract the avoidance, reduction or deferral of liability which would

otherwise be effected by or as a result of that transaction or series of transactions.

(2) For the purposes of this section, a transaction includes any arrangement, agreement, operation, scheme or event, or any action, omission, decision or concurrence, whether or not -

- (a) enforceable by legal proceedings,
- (b) involving or dependent on any action by, or any omission, decision or concurrence of, the person concerned or any other person, or more than one person,
- (c) brought to a conclusion, and
- (d) involving or dependent on any other transaction.

(3) For the purposes of this section, and for the avoidance of doubt, it is immaterial -

- (a) when or where the transaction or series of transactions (or any of the series of transactions) occurs,
- (b) whether or not the transaction or series of transactions (or any of the series of transactions) -

- (i) was undertaken by or on behalf of, or in conjunction with, the person concerned, or
 - (ii) was undertaken by or on behalf of, or in conjunction with, more than one person, and
- (c) whether or not the avoidance, reduction or deferral of liability -
- (i) was an intended effect of the transaction or series of transactions, or any of the series of transactions, or
 - (ii) was the only or principal effect.

(4) In this section the expression "avoidance, reduction or deferral" of liability to pay contributions includes (without limitation) an increase or enhancement in the entitlement of the person concerned to a repayment of any contributions.

Contributions payable in proportion to total amount of income or earnings.

16B. (1) Every person who is liable to pay a contribution under this Law shall contribute in proportion to the total amount of all income or earnings, as the case may be, relevant to the class of contribution determined by the Department to be appropriate in his circumstances.

(2) For the purpose of subsection (1), the total amount of

all income or earnings, as the case may be, relevant to the class of contribution concerned, includes amounts which -

- (a) are determined under, or
- (b) derived from the application of,

the provisions of sections 16C or any other provision of this Law.

Power to make regulations, directions and orders concerning avoidance.

16C. (1) Regulations may provide for such measures as appear reasonably necessary to the Department to counter avoidance, or reduction, of any liability to pay contributions of any class, including (without limitation) assignment of a monetary value to any asset, right, benefit or other thing available for the enjoyment of a contributor (whether that enjoyment is taken or foregone), for the purposes of determining the total amount of income or earnings, as the case may be, relevant to any class of contribution.

(2) The Department may, in any particular case, where it appears to the Department to be fair and reasonable with regard to the interests of the general body of insured persons -

- (a) direct that -
 - (i) money, and
 - (ii) the monetary value (as determined by the Department) of assets, goods, services or other things,

provided for, or made available to, a contributor by another person, shall be treated as the income or earnings, as the case may be, of that contributor, and

- (b) order the substitution of such amount (as determined by the Department) of income or earnings, as the case may be, which may be relevant to any class of contribution in place of the amount of income or earnings, as the case may be, declared by or on behalf of a contributor .

Provisions of section 16A to 16C without prejudice to other provisions of Law.

16D. The provisions of sections 16A to 16C are without prejudice to the generality of any other provision of this Law under which the Department has power to take measures for the purpose of -

- (a) countering avoidance, or reduction, of any liability to pay contributions of any class, or
- (b) ensuring fairness in relation to general body of insured persons."

(6) In section 88(5) of the Law of 1978 -

- (a) for "they" substitute "it", and

- (b) delete "to them".
- (7) Section 89 of the Law of 1978 is repealed.
- (8) Immediately before section 116 of the Law of 1978 insert -

"Power to amend Law by Ordinance.

- 115A.** (1) The States may by Ordinance amend -
- (a) Part I, II, V or VI, and
 - (b) any other Part where, in the case of that other Part, the amendment is -
 - (i) necessary to give full effect to, or
 - (ii) consequential upon,any amendment made under paragraph (a).
- (2) An Ordinance under subsection (1) may, for the avoidance of doubt -
- (a) create new offences, and
 - (b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law."

Interpretation.

2. (1) In this Law -

"**Arrangement of Sections**" means the arrangement of sections to the Law of 1978, and

"**the Law of 1978**" means the Social Insurance (Guernsey) Law, 1978 as amended^d.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^e shall apply to the interpretation of this Law throughout the Islands of Guernsey, Alderney, Herm and Jethou.

Citation.

3. This Law may be cited as the Social Insurance (Guernsey) (Amendment) Law, 2006.

Commencement.

4. This Law shall come into force on the Monday next following its registration on the Records of the Island of Guernsey.

^d Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; No. V of 1990; Nos. V and XII of 1993; Ordinance No. XIV of 1993; Ordres en Conseil No. V of 1994, Nos. VI and XIII of 1995; No. I of 1998; No. VI of 1999; No. X of 2000; No. IX of 2001; No XXIV of 2003.

^e Ordres en Conseil Vol. XIII, p. 355.

**The Foreign Tax (Retention Arrangements)
(Guernsey and Alderney) (Amendment) Ordinance, 2006**

THE STATES, in pursuance of their Resolution of the 26th July, 2006^a, and in exercise of the powers conferred on them by sections 1 to 5 of the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004^b and all other powers enabling them in that behalf, hereby order:-

Approved international agreements with Bulgaria and Romania.

1. (1) In Schedule 1 to the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005^c ("countries with which approved international agreements are made") add the following entries at the appropriate places -

Bulgaria	17 th October, 2006
Romania	17 th October, 2006

(2) The agreements on the taxation of savings income made between Guernsey and the countries listed in subsection (1) on the dates listed in that subsection, entered into for the purpose of applying the retention tax in the transitional period, are accordingly -

- (a) approved for the purposes of the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004, and

^a Article XII of Billet d'État No. XIII of 2006.

^b Order in Council No. VIII of 2005.

^c Ordinance No. XI of 2005.

- (b) approved international agreements for the purposes of the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005.

Interpretation.

2. Expressions in this Ordinance have the meanings given by the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005.

Citation.

3. This Ordinance may be cited as the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2006.

Commencement of Ordinance.

4. This Ordinance shall come into force on the date appointed by regulations of the Policy Council, and different dates may be appointed for the purposes of different approved international agreements.

The Lebanon (Restrictive Measures) (Guernsey) Ordinance, 2006

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948, as amended^b, hereby orders:

Application of EC Regulation.

1. Council Regulation (EC) No. 1412/2006 of the 25th September, 2006^c imposing certain specific restrictive measures in view of the situation in Lebanon ("**the EC Regulation**") is applicable in Guernsey in all respects as if Guernsey were a Member State.

Offences.

2. Any person who, except under the authority of a licence granted by the Council under this Ordinance, directly or indirectly infringes any of the following prohibitions in the EC Regulation -

- (a) Article 2(a), prohibiting the provision of technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related material of all types, to any person, entity

^a Order in Council No. III of 1994.

^b Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

^c OJ L 267, 27.9.2006, p.2.

or body in, or for use in Lebanon,

- (b) Article 2(b), prohibiting the provision of financing or financial assistance related to military activities for any sale, supply, transfer or export of arms and related material to any person, entity or body in, or for use in Lebanon, and
- (c) Article 2(c), prohibiting the participation, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in Article 2(a) or 2(b),

is guilty of an offence.

Licences.

3. (1) Authorisation for the transactions set out in section 2, as provided for in Article 3 of the EC Regulation, shall in Guernsey be by way of a licence in writing granted by the Council.

- (2) If, for the purpose of obtaining a licence, any person -
 - (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or
 - (b) recklessly makes any statement or furnishes an document or information which is false in a material particular,

he is guilty of an offence; and any licence granted in connection with the application for which the false statement was made or the false document or information furnished is void as from the time it was granted.

(3) Any person who, having acted under the authority of a licence granted under this section, fails to comply with any of the requirements or conditions to which the licence is subject is guilty of an offence, unless -

- (a) the licence had been previously modified by the Council without that person's consent, and
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified.

Penalties and proceedings.

4. (1) A person guilty of an offence under -

- (a) section 2 or 3, or
- (b) paragraph 2(b) or 2(c) of the Schedule,

is liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both, or
- (ii) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to

both.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(3) Where a body corporate is guilty of an offence under this Ordinance, and the offence 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.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Certain provisions of customs and excise Law applicable.

5. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^d applies to the detention of a person for an offence under section 2 or 3 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences,

^d Ordres en Conseil Vol. XXII, p, 573; and Order in Council No. XIII of 1991.

penalties and proceedings for offences under this Ordinance as they apply to offences, penalties and proceedings for offences under the customs Laws or excise Laws.

Information.

6. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Council, of information for the purpose of ensuring compliance with the EC Regulation.

Modification of Regulation.

7. The EC Regulation in its application to Guernsey shall be modified as follows -

- (a) in Article 3(1) and (2) for the words "the competent authorities of Member States as listed in the Annex" substitute "the Council", and
- (b) in Article 3(3) for the words "The competent authorities of Member States" substitute "The Council",

Interpretation.

8. (1) In this Ordinance -

"**Council**" means the States of Guernsey Policy Council,

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly,

"**customs Laws**" and "**excise Laws**" mean those provisions of the

Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

"**EC Regulation**" has the meaning given by section 1,

"**Guernsey**" means the Bailiwick of Guernsey apart from Alderney and Sark,

"**Schedule**" means the schedule to this Ordinance, and

"**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^e.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

9. (1) This Ordinance may be cited as the Lebanon (Restrictive Measures) (Guernsey) Ordinance 2006.

(2) This Ordinance shall come into force on the 31st October, 2006.

^e Ordres en Conseil Vol. XXXI, p. 278.

SCHEDULE

Section 6

INFORMATION

1. (1) The Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Guernsey to furnish or produce to it (or, as the case may be, to that authorised person) any information or document in his possession or control which the Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EC Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person

to produce documents shall include power to take copies of or extracts from any document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2. A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the information was furnished or the document was

produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of Guernsey,
- (c) on the authority of the Council, to the European Commission or to any of the competent authorities listed in the Annex to the EC Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EC Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.