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PROJET DE LOI

ENTITLED

The Income Tax (Pension Amendments) (Guernsey) Law, 2011

THE STATES, in pursuance of their Resolution of the 24th November, 2010^a, 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 and Herm.

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975, as amended^b, is further amended as follows.

^a Article IX of Billet d'État No. XXIII of 2010 (Volume 1).

^b Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No's. VII and XXI of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; No. XXI of 2007; the Income Tax (Zero 10) (Guernsey) Law, 2007; the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007; No. XXVI of 2008; the Income Tax (Guernsey) (Amendment) Law, 2008; the Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009; the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009; the Income Tax (Guernsey) (Amendment) Law, 2009; and the Income Tax (Guernsey) (Amendment) Law, 2010. Also amended by Ordinance No. XXXIII of 2003 and Ordinance No. VII of 2009.

2. In section 8(2A)(b)^c after the words "and may include" insert "(or may authorise the Department to prescribe by regulation)".

3. In section 8(3)(b) after the words "section one hundred and fifty-one of this Law" insert ", subject to any limitations, conditions, restrictions and qualifications prescribed by or pursuant to that section".

4. After section 8(3)(b) insert the following paragraph -

"(bb) the amount of any contribution to a retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax in accordance with the provisions of section 157A(2) or (4), subject to any limitations, conditions, restrictions and qualifications prescribed pursuant to sections 36 and 157A(10)".

5. In section 36(1) after the words "and the conditions applicable to such allowances" insert ", and for the avoidance of doubt any such Resolution may authorise the Department to prescribe any matter relating to any such allowance (including, without limitation, any limitations, conditions, restrictions and qualifications) by regulation".

6. In section 150(2)(b) the words "wholly or partly in Guernsey" are repealed.

7. For the proviso to section 151(1) substitute the following -

^c Subsection (2A) of section 8 was inserted by Order in Council No. III of 1995 (Vol. XXXVI, p. 71).

"Provided that no such deduction shall be made in respect of contributions to the extent that they exceed, in the aggregate, the lesser of the following amounts -

- (a) an amount equal to 100% of the aggregate of the said income and any other income of the individual in question in respect of which tax is chargeable and arising or accruing in the year of computation, or
- (b) such amount as the Department may prescribe by regulation."

8. After section 151(1) insert the following subsection -

"(1A) Where in any year of computation an individual has made contributions described in subsection (1) of an aggregate amount which is less than the maximum amount he is entitled to deduct from his income in that year by virtue of the proviso to that subsection -

- (a) he may carry forward the unused balance to any succeeding year not being later than the sixth year immediately following the year of computation in which the unused balance accrued,
- (b) in that succeeding year the maximum deduction that may be made in respect of such contributions shall not exceed the aggregate of-

- (i) the maximum amount he is entitled to deduct in that succeeding year by virtue of the said proviso, and
 - (ii) the amount of the unused balance carried forward, and
- (c) any such contribution made in any succeeding year which exceeds the maximum amount an individual is entitled to deduct in that succeeding year by virtue of the said proviso shall be set off against the amount of the unused balance carried forward irrespective of whether the result of such setting off is to reduce the amount of tax payable by him in respect of that year."

9. After section 153 insert the following section -

"Full commutation of benefits under pension schemes permitted in certain circumstances.

153A. (1) Notwithstanding any provision of or under this Law imposing a limitation on the amount of a lump sum that may be paid out of an approved scheme in commutation of or in lieu of a pension (whether the limitation is expressed by reference to the years of service and final remuneration or to the value of the fund or otherwise), a lump sum may, at the discretion of the trustee or other person having the management of an approved scheme, be paid out of or under the provisions of the scheme in full commutation of or in lieu of a pension in the following circumstances -

(a) the individual in question has attained the age of 50 years and the aggregate value of the funds attributable to him and accumulated under -

(i) that scheme,

(ii) any other approved scheme of which he is a member, and

(iii) any retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax in accordance with the provisions of section 157A(2) or (4) of which he is a member,

does not exceed £30,000, the valuation being made immediately before the time of the making of the payment,

(b) the individual has attained the age of 50 years and the aggregate value of the fund attributable to him and accumulated under that scheme does not exceed £15,000, the valuation being made immediately before the time of the making of the payment, or

(c) the individual has not attained the age of 50 years and the aggregate value of the fund

attributable to him and accumulated under that scheme does not exceed £15,000, the valuation being made immediately before the time of the making of the payment.

(2) A lump sum paid to an individual by virtue of subsection (1) shall be treated as income of the year in which it is paid and tax in respect thereof shall be chargeable in accordance with the provisions of or under this Law -

- (a) in the case of a lump sum paid by virtue of paragraph (a) or (b) of subsection (1), at one half of the appropriate rate in force for the year of charge in which the lump sum is paid, and
- (b) in the case of a lump sum paid by virtue of paragraph (c) of subsection (1), at the appropriate rate in force for the said year of charge.

(3) For the purposes of this section the value of the fund accumulated under an approved scheme and attributable to an individual shall be calculated by the trustees or other persons having the management of the scheme on the advice of a Fellow of the Institute and Faculty of Actuaries or a person holding other actuarial qualifications approved by the Director of Income Tax, who shall have taken into account the formula used to calculate the value of a transfer payment (within the meaning of section 150(2A)) out of the scheme into another pension scheme approved by the Director of Income Tax in accordance with the provisions of section 150.

(4) The Department may by regulation amend this section."

10. In section 154(1) for "and shall be accompanied" substitute "and shall, if the Director of Income Tax so requires, be accompanied".

11. In section 157A(2)(a)^d after "the contract is made by an individual," the expression "resident in Guernsey," is repealed.

12. In the proviso to section 157A(2)(c)^e -

(a) for "25 per cent" substitute "30% (or such other percentage as the Department may prescribe by regulation)", and

(b) for "and shall make any such right depend on the exercise by the individual of an election at or about the time when the annuity first becomes payable to him" substitute -

"and may also give the individual the right to elect to take the lump sum or (subject to the aggregate amount taken by the individual by way of lump sum by virtue of the contract not exceeding the percentage amount for the time being specified in or under this proviso) any part thereof on attaining the age of 50 years or at any time after attaining that age.

^d Section 157A was inserted by Ordres en Conseil Vol. XXVIII, p. 278 and the words "resident in Guernsey," were inserted by Order in Council No. IV of 1991.

^e Section 157A was inserted by Ordres en Conseil Vol. XXVIII, p. 278 and the proviso was amended by Order in Council No. XXII of 1997.

If, in the opinion of the Director of Income Tax, the individual's occupation is one in which persons customarily retire before attaining the age of 50 years, then the right to elect to take the lump sum or any part thereof may instead be exercised by the individual on attaining the customary age of retirement in respect of that occupation or at any time after attaining that age."

13. In section 157A(10) the words "in receipt of relevant earnings"^f in both places where appearing are repealed.

14. After section 157A(10) insert the following subsection -

"(11) Where in any year of computation an individual has paid premiums under a retirement annuity scheme or contributions under a retirement annuity trust scheme of an aggregate amount which is less than the maximum amount he is entitled to deduct from his income in that year by virtue of the Resolution of the States under section 36 which is applicable in respect of that year -

- (a) he may carry forward the unused balance to any succeeding year not being later than the sixth year immediately following the year of computation in which the unused balance accrued,

^f Section 157A was inserted by Ordres en Conseil Vol. XXVIII, p. 278 and the words "in receipt of relevant earnings" were inserted by Order in Council No. IV of 1991.

- (b) in that succeeding year the maximum deduction that may be made in respect of such premiums or contributions shall not exceed the aggregate of -
- (i) the maximum amount he is entitled to deduct in that succeeding year by virtue of the Resolution of the States under section 36 which is applicable in respect of that year, and
 - (ii) the amount of the unused balance carried forward, and
- (c) any such premium or contribution made in any succeeding year which exceeds the maximum amount an individual is entitled to deduct in that succeeding year by virtue of the Resolution of the States under section 36 which is applicable in respect of that year shall be set off against the amount of the unused balance carried forward irrespective of whether the result of such setting off is to reduce the amount of tax payable by him in respect of that year."

15. After section 157C^g insert the following section -

^g Section 157C was inserted by Order in Council No. IV of 1991.

"Full commutation of benefits under approved annuity schemes permitted in certain circumstances.

157CA. (1) Notwithstanding any provision of or under this Law imposing a limitation on the amount of a lump sum that may be paid out of a retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax in accordance with the provisions of section 157A(2) or (4) in commutation of or in lieu of a pension (whether the limitation is expressed by reference to the value of the fund accumulated under the contract or trust or otherwise), a lump sum may, at the discretion of the company, trustee or other person having the management of such a scheme, be paid out of or under the provisions of the scheme in full commutation of or in lieu of a pension in the following circumstances -

- (a) the individual in question has attained the age of 50 years and the aggregate value of the fund attributable to him and accumulated under -
 - (i) that scheme,
 - (ii) any other retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax in accordance with the provisions of section 157A(2) or (4) of which he is a member, and
 - (iii) any approved scheme within the meaning of section 150(1) of which he is a member,

does not exceed £30,000, the valuation being made immediately before the time of the making of the payment,

- (b) the individual has attained the age of 50 years and the aggregate value of the fund attributable to him and accumulated under that scheme does not exceed £15,000, the valuation being made immediately before the time of the making of the payment, or
- (c) the individual has not attained the age of 50 years and the aggregate value of the fund attributable to him and accumulated under that scheme does not exceed £15,000, the valuation being made immediately before the time of the making of the payment.

(2) A lump sum paid to an individual by virtue of subsection (1) shall be treated as income of the year in which it is paid and tax in respect thereof shall be chargeable in accordance with the provisions of or under this Law -

- (a) in the case of a lump sum paid by virtue of paragraph (a) or (b) of subsection (1), at one half of the appropriate rate in force for the year of charge in which the lump sum is paid, and
- (b) in the case of a lump sum paid by virtue of paragraph (c) of subsection (1), at the

appropriate rate in force for the said year of charge.

(3) For the purposes of subsection (1)(a)(iii) the value of the fund accumulated under an approved scheme and attributable to an individual shall be calculated in accordance with the provisions of section 153A(3).

(4) The Department may by regulation amend this section."

Citation.

16. This Law may be cited as the Income Tax (Pension Amendments) (Guernsey) Law, 2011.

Commencement.

17. This Law shall have effect, by virtue of the States' Resolution of the 27th April, 2011^h, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992ⁱ, on and from the 27th April, 2011 and in respect of any year of charge after 2010, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

^h Article ** of Billet d'État No. ** of 2011.

ⁱ Order in Council No. XI of 1992.

PROJET DE LOI

ENTITLED

The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011

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PROJET DE LOI

ENTITLED

The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011

THE STATES, in pursuance of their Resolution of the ** March, 2011^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

DESIGNATIONS

Meaning of "designated person".

1. In this Law, "**designated person**" means -
 - (a) a person who is the subject of a designation under this Law,
 - (b) a person who is the subject of a designation under and within the meaning of the Terrorist Asset-Freezing etc. Act 2010^b, or
 - (c) a natural or legal person, group or entity included in the list provided for by Article 2(3) of Council

^a Article V of Billet d'État No. IV of 2011.

^b An Act of Parliament (2010 c.38).

Regulation (EC) No 2580/2001 of the 27th December 2001^c on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (as that Regulation is amended from time to time).

Interim designation.

2. (1) The Policy Council may make an interim designation of a person if -

- (a) the Policy Council reasonably suspects -
 - (i) that the person is or has been involved in terrorist activity,
 - (ii) that the person is owned or controlled directly or indirectly by a person within subparagraph (i), or
 - (iii) that the person is acting on behalf of or at the direction of a person within subparagraph (i), and
- (b) the Policy Council considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.

^c OJ L 344, 28.12.2001, p. 70.

(2) Sections 4(2) to (4) apply for the purposes of this section as they apply for the purposes of Section 4.

(3) The Policy Council may not make more than one interim designation of the same person in relation to the same, or substantially the same, evidence.

(4) Nothing in this section prevents the making of a final designation in accordance with section 4 of a person who has been the subject of an interim designation.

Duration of interim designation.

3. (1) An interim designation of a person -

- (a) is of no effect during any period when the person is a designated person under section 1(b) or (c), and
- (b) expires at the end of the 30 days beginning with the day on which it was made, or when a final designation of the person is made, whichever is earlier.

(2) Where an interim designation expires the Policy Council must -

- (a) give written notice of the expiry to the designated person, and
- (b) take reasonable steps to bring the expiry to the attention of the persons who were informed of the designation.

(3) Where an interim designation expires on the making of a final designation in relation to the same person -

- (a) a notice under subsection (2) may be combined with written notice under section 6 of the final designation, and
- (b) steps under subsection (2) may be combined with steps under section 6 to publicize the final designation.

Power to make final designation.

4. (1) The Policy Council may make a final designation of a person if -

- (a) the Policy Council believes -
 - (i) that the person is or has been involved in terrorist activity,
 - (ii) that the person is owned or controlled directly or indirectly by a person within subparagraph (i), or
 - (iii) that the person is acting on behalf of or at the direction of a person within subparagraph (i), and
- (b) the Policy Council considers that it is necessary for purposes connected with protecting members of the

public from terrorism that financial restrictions should be applied in relation to the person.

(2) For the purposes of this section, involvement in terrorist activity is any one or more of the following -

- (a) the commission, preparation or instigation of acts of terrorism,
- (b) conduct that facilitates the commission, preparation or instigation of such acts, or that is intended to do so, and
- (c) conduct that gives support or assistance to persons who are known or believed by the person giving the support or assistance to be involved in conduct falling within paragraph (a) or (b).

(3) For the purposes of this section, it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.

(4) The reference in subsection (1)(b) to financial restrictions includes a reference to restrictions relating to economic resources.

Duration and renewal of final designation.

- 5. (1) A final designation of a person -
 - (a) is of no effect during any period when the person is a designated person under section 1(b) or (c), and

(b) expires 12 months after it was made, unless it is renewed.

(2) The Policy Council may renew a final designation of a person at any time before it expires, if the requirements for final designation under section 4 are met in respect of the person at the time of the renewal.

(3) A final designation so renewed expires 12 months after it was renewed (or last renewed), unless it is renewed again.

(4) Section 6 applies to the renewal under this section of a final designation in the same way as it applies to a final designation under section 4.

(5) Where a final designation expires the Policy Council must -

(a) give written notice of the expiry to the designated person, and

(b) take reasonable steps to bring the expiry to the attention of the persons who were informed of the designation.

(6) Nothing in this section prevents the Policy Council from designating a person more than once under section 4.

Notification of designation.

6. (1) Where the Policy Council makes a designation of a person, the Policy Council must -

- (a) give written notice of the designation to the person,
and
- (b) take steps to publicize the designation.

(2) Unless one or more of the following conditions is satisfied, the Policy Council must take steps to publicize the designation generally -

- (a) the Policy Council believes that the designated person is an individual under the age of 18,
- (b) the Policy Council considers that disclosure of the designation should be restricted -
 - (i) in the interests of the security of the Bailiwick or of any other country or territory,
 - (ii) for reasons connected with the prevention or detection of serious crime, or
 - (iii) in the interests of justice.

(3) If one or more of those conditions is satisfied, the Policy Council must inform only such persons of the designation as the Policy Council considers appropriate.

(4) If one or more of the conditions referred to in subsection (2) is satisfied in respect of a designation, but later none of the conditions referred to in subsection (2) is satisfied in respect of the designation, and the designation is still in effect, the Policy Council must -

- (a) give written notice of that fact to the designated person, and
- (b) take steps to publicize the designation generally.

Variation or revocation of designation.

7. (1) The Policy Council may at any time vary or revoke a designation.

(2) Where the Policy Council varies or revokes a designation of a person, the Policy Council must -

- (a) give written notice of the variation or revocation to the person, and
- (b) take reasonable steps to bring the variation or revocation to the attention of the persons who were informed of the designation under section 6.

(3) If the Policy Council refuses an application by a person for the variation or revocation of the person's designation by the Policy Council, the Policy Council must give written notice of the refusal to the person.

Confidential information.

8. (1) Where the Policy Council in accordance with section 6(3) informs only certain persons of the designation of a person, the Policy Council may specify that the information conveyed in so informing those people is to be treated as confidential.

- (2) A person who -
- (a) is provided with information that is so specified as to be treated as confidential, or
 - (b) obtains such information,

must not disclose it if the person knows, or has reasonable cause to suspect, that the information has been specified under subsection (1) as information to be treated as confidential.

(3) Subsection (2) does not apply to any disclosure made by the person if that disclosure is made with lawful authority.

(4) For the purposes of subsection (3), information is disclosed with lawful authority only if and to the extent that -

- (a) the disclosure is made by the Policy Council or authorized by the Policy Council,
- (b) the disclosure is made by the designated person or made with the consent of the designated person,
- (c) the disclosure is necessary to give effect to a requirement imposed under or by virtue of this Law or any other enactment, or
- (d) the disclosure is required by any direction or order of the Royal Court.

(5) This section does not prevent the disclosure of information that is already, or has previously been, available to the public from other sources.

(6) A person who contravenes subsection (2) commits an offence.

(7) The Royal Court may -

(a) on the application of the designated person who is the subject of the information, or

(b) on the application of Her Majesty's Procureur,

grant an injunction to prevent a breach of subsection (2).

PART II

PROHIBITIONS IN RELATION TO DESIGNATED PERSONS

Freezing of funds and economic resources.

9. (1) A person ("P") must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) In subsection (1) "**deal with**" means -

(a) in relation to funds -

(i) use, alter, move, allow access to, or transfer, the funds,

- (ii) deal with the funds in any other way that would result in any change in their volume, amount, location, ownership, possession, character or destination, or
 - (iii) make any other change that would enable use of the funds, including by way of, or in the course of, portfolio management, or
- (b) in relation to economic resources, exchange, or use in exchange, for funds, goods or services.
- (3) A person who contravenes subsection (1) commits an offence.

Making funds or financial services available to designated person.

10. (1) A person ("P") must not make funds or financial services available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.

- (2) A person who contravenes subsection (1) commits an offence.

Making funds or financial services available for benefit of designated person.

11. (1) A person ("P") must not make funds or financial services available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.

- (2) For the purposes of subsection (1) -

- (a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
 - (b) "**financial benefit**" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) A person who contravenes subsection (1) commits an offence.

Making economic resources available to designated person.

12. (1) A person ("P") must not make economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect -

- (a) that P is making the economic resources so available, and
 - (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.
- (2) A person who contravenes subsection (1) commits an offence.

Making economic resources available for benefit of designated person.

13. (1) A person ("P") must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.

- (2) For the purposes of subsection (1) -

- (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
 - (b) "**financial benefit**" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) A person who contravenes subsection (1) commits an offence.

Exceptions.

14. (1) The prohibitions in sections 9 to 11 are not contravened by a relevant institution crediting a frozen account with -

- (a) interest or other earnings due on the account, or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) The prohibitions in sections 10 and 11 do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

(3) The prohibition in section 11 is not contravened by the making of a payment that -

- (a) is a benefit under or by virtue of a relevant enactment (irrespective of the name or nature of the benefit), and
- (b) is made to a person who is not a designated person,

whether or not the payment is made in respect of a designated person.

(4) A relevant institution must without delay inform the Policy Council if it credits a frozen account with a payment referred to in subsection (1)(b) or in the circumstances referred to in subsection (2).

(5) In this section -

"frozen account" means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person, and

"relevant enactment" includes the Social Insurance (Guernsey) Law, 1978^d, the Health Service (Benefit) (Guernsey) Law, 1990^e, the Long-term Care Insurance (Guernsey) Law, 2002^f and such other enactment as the States may by Ordinance prescribe.

^d Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59; Vol. XXIV, p. 510; Vol. XXXV(1), p. 164; Vol. XXXVI, pp. 123 and 343; Vol. XXXIX, p. 107; Vol. XL, p. 351; Order in Council No. IX of 2001; No. XXIII of 2002; No. XXIV of 2003; No. XI of 2004 and No. XVIII of 2007; Recueil d'Ordonnances Tome XXVI, p. 177 and Ordinance No. XLII of 2009.

^e Ordres en Conseil Vol. XXXII, p. 192; Recueil d'Ordonnances Tome XXVI, pp. 177, 483, and 495; Tome XXIX, pp. 182 and 305 and modified by Tome XXVI, pp. 484 and 491; Tome XXVII, p. 200; Tome XXVIII, p. 1; Tome XXIX, pp. 182, 196, 200, 210, 373 and 580; Tome XXXI, p. 628; Tome XXXII, p. 628.

^f Order in Council No. XXIII of 2002.

Licences.

15. (1) The prohibitions in sections 9 to 13 do not apply to anything done under the authority of a licence granted by the Policy Council under this section.

(2) The Policy Council may grant a licence in respect of a designated person.

(3) A licence granted under this section -

- (a) must specify the acts authorized by it,
- (b) may be general or granted to a category of persons or to a particular person,
- (c) may be unconditional or subject to conditions, and
- (d) may be unlimited or limited in duration.

(4) The Policy Council may at any time vary or revoke a licence granted under this section.

(5) On the grant, variation or revocation of a licence under this section, the Policy Council must -

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

- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Policy Council considers appropriate to publicize the grant, variation or revocation of the licence.

(6) A person who, for the purpose of obtaining a licence under this section, knowingly or recklessly -

- (a) provides information that is false in a material respect, or
- (b) provides or produces a document that is not what it purports to be,

commits an offence.

(7) A person who purports to act under the authority of a licence granted under this section but fails to comply with any condition to which the licence is subject commits an offence.

Circumventing prohibitions etc.

16. (1) A person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly) -

- (a) to circumvent section 9(1), 10(1), 11(1), 12(1) or 13(1), or
- (b) to enable or facilitate the contravention of any of those provisions.

- (2) A person who contravenes subsection (1) commits an offence.

PART III
INFORMATION

Reporting obligations of relevant institutions.

17. (1) A relevant institution must inform the Policy Council as soon as practicable if -

(a) it knows, or has reasonable cause to suspect, that a person -

(i) is a designated person, or

(ii) has committed an offence under any provision of Part II, and

(b) the information or other matter on which the knowledge or reasonable cause for suspicion is based came to it in the course of carrying on its business.

(2) Where a relevant institution informs the Policy Council under subsection (1) it must state -

(a) the information or other matter on which the institution's knowledge or reasonable cause for suspicion is based, and

(b) any information that the institution holds about the person by which the person can be identified.

- (3) Subsection (4) applies if -
- (a) a relevant institution informs the Policy Council under subsection (1) that it knows, or has reasonable cause to suspect, that a person is a designated person, and
 - (b) that person is a customer of the institution.

(4) The relevant institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.

(5) A relevant institution that fails to comply with subsection (1) commits an offence.

Powers to require information.

18. (1) The Policy Council may require a designated person to provide information concerning -

- (a) funds or economic resources owned, held or controlled by, or on behalf of, the designated person, or
- (b) any disposal of such funds or economic resources.

(2) The Policy Council may require a designated person to provide such information as the Policy Council may reasonably require about expenditure -

- (a) by or on behalf of the designated person, or
- (b) for the benefit of the designated person.

(3) The power in subsection (1) or (2) is exercisable only where the Policy Council believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Law.

(4) The Policy Council may require a person acting under a licence granted under section 15 to provide information concerning -

- (a) funds or economic resources dealt with under the licence, or
- (b) funds, economic resources or financial services made available under the licence.

(5) The Policy Council may require any person in or resident in the Bailiwick to provide such information as the Policy Council may reasonably require for the purpose of -

- (a) establishing for the purposes of this Law -
 - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person,
 - (ii) the nature and amount or quantity of any funds, economic resources or financial services made

available directly or indirectly to, or for the benefit of, a designated person, or

- (iii) the nature of any financial transactions entered into by a designated person,
- (b) monitoring compliance with or detecting evasion of this Law, or
- (c) obtaining evidence of the commission of an offence under this Law.

(6) The Policy Council may specify the manner in which, and the period within which, information is to be provided, being information that the Policy Council requires to be provided under this section.

(7) If no such period is specified, the information so required to be provided must be provided within a reasonable time.

(8) A requirement under this section may impose a continuing obligation to keep the Policy Council informed –

- (a) as circumstances change, or
- (b) on such regular basis as the Policy Council may specify.

(9) Information required to be provided under this section may relate to any period during which a person is, or was, a designated person.

(10) Information referred to in subsection (1)(b), (2) or (5)(a)(iii) may relate to any period before the person became a designated person (as well as, or instead of, any period of time).

Production of documents.

19. (1) A requirement under section 18 may include a requirement to produce specified documents or documents of a specified description.

(2) Where the Policy Council requires under section 18 that one or more documents be produced, the Policy Council may -

(a) take copies of or extracts from any document so produced,

(b) require any person so producing a document to give an explanation of the document, and

(c) where a person so producing a document is a partnership, association or body corporate, require a person who is -

(i) in the case of a partnership, a present or past partner or employee of the partnership,

(ii) in any other case, a present or past officer or employee of the association or body corporate,

to give an explanation of the document.

(3) Where the Policy Council requires under section 18 a designated person, or a person acting under a licence granted under section 15, to produce one or more documents, the person must –

- (a) take reasonable steps to obtain the documents (if not already in the person's possession or control), and
- (b) keep the documents under the person's possession or control (except for the purpose of providing them to the Policy Council or as the Policy Council may otherwise permit).

Failure to comply with requirement for information.

20. (1) A person commits an offence 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 requirement made under this Part,
- (b) knowingly or recklessly gives any information, or produces any document, that is false in a material particular in response to such a requirement,
- (c) with intent to evade the provisions of this Part, destroys, mutilates, defaces, conceals or removes a document, or

- (d) otherwise intentionally obstructs the Policy Council in the exercise of the Policy Council's powers under this Part.

(2) Where a person is convicted of an offence under this section, the court may make an order requiring the person, within such period as may be specified in the order, to comply with the relevant requirement in accordance with the order, or to do such other thing relating to the requirement as the court orders.

General power to disclose information

21. (1) The Policy Council may disclose any information obtained by it in exercise of its powers under this Part (including any document so obtained and any copy or extract made of any document so obtained) -

- (a) to Her Majesty's Procureur,
- (b) to a police officer,
- (c) to a person holding or acting in any office under or in the service of -
 - (i) the Crown in right of Her Majesty's Government of the United Kingdom,
 - (ii) the Crown in right of the Scottish Administration, the Northern Ireland Administration or the Welsh Assembly Government,

- (iii) the States, the States of Alderney or the Chief Pleas of Sark,
 - (iv) the States of Jersey
 - (v) the Government of the Isle of Man, or
 - (vi) the Government of any British overseas territory,
- (d) to any law officer of the Crown for Jersey or the Isle of Man,
- (e) to the Office of the Legal Aid Administrator, the Legal Services Commission of the United Kingdom, the Scottish Legal Aid Board and the Northern Ireland Legal Services Commission,
- (f) to the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^g, the Financial Services Authority of the United Kingdom, the Jersey Financial Services Commission, the Isle of Man Insurance and Pensions Authority and the Isle of Man Financial Supervision Commission,

^g Ordres en Conseil Vol. XXX, p. 243.

- (g) for the purpose of giving assistance or co-operation, pursuant to the relevant Security Council resolutions, to -
 - (i) any organ of the United Nations, or
 - (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country or territory,
- (h) with a view to instituting, or otherwise for the purposes of, any proceedings -
 - (i) in the Bailiwick, for an offence under this Law,
 - (ii) in the United Kingdom, for an offence under the Terrorist Asset-Freezing etc. Act 2010, or
 - (iii) in Jersey, in the Isle of Man or in any British overseas territory, for an offence under a similar provision in any such jurisdiction, or
- (j) with the consent of a person who, in his or her own right, is entitled to the information or to possession of the document, copy or extract, to a third party.

(2) In subsection (1)(j) "**in his or her own right**" means not merely in the capacity as a servant or agent of another person.

Co-operation with investigations.

22. (1) Her Majesty's Procureur must take such steps as he considers appropriate to co-operate with an investigation relating to the funds, economic resources or financial transactions of a designated person.

(2) The Policy Council must take such steps as it considers appropriate to co-operate with an investigation relating to the funds, economic resources or financial transactions of a designated person.

(3) Subsections (1) and (2) apply whether the investigation takes place in the Bailiwick or elsewhere.

Application of provisions.

23. (1) Nothing done in accordance with this Part is to be treated as a breach of any restriction imposed by contract, enactment or otherwise.

(2) However, nothing in this Part authorizes a disclosure that -

(a) contravenes the Data Protection (Bailiwick of Guernsey) Law, 2001^h, or

(b) is prohibited by Part I of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003ⁱ.

^h Order in Council No. V of 2002 as modified by Ordinance No. XXIV of 2004 and No. 2 of 2010; the European Communities (Implementation of Council Directive on Privacy and Electronic Communications) (Sark) Ordinance, 2004 and G.S.I. Nos.14, 15, 16 and 24 of 2002.

(3) Nothing in this Part is to be read as requiring a person ("P") who has acted for another person in the capacity of advocate, counsel or solicitor, or otherwise in the capacity of lawyer, to disclose any privileged information that is in P's possession in that capacity.

(4) This Part does not limit the circumstances in which information may be disclosed otherwise than by virtue of this Part.

(5) This Part does not limit the powers of the Policy Council to impose conditions in connection with the performance of the Policy Council's functions under section 15.

(6) In this section -

"information" includes documents, and

"privileged information" means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

ⁱ Order in Council No. XXX of 2003; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Regulation of Investigatory Powers (Applicable Public Authorities) Regulations, 2004 (G.S.I. No. 26 of 2004). The Law is modified by the Regulation of Investigatory Powers (British Broadcasting Corporation) Regulations, 2004 (G.S.I. No. 25 of 2004).

PART IV
SUPPLEMENTARY PROVISIONS

Appeals.

24. (1) This section applies to any decision of the Policy Council taken in the performance of, or in connection with, its functions under this Law including, for the avoidance of doubt, any decision -

- (a) to make or vary an interim or final designation of a person,
- (b) to renew a final designation of a person, or
- (c) not to vary or revoke an interim or final designation of a person.

(2) A person aggrieved by a decision to which this section applies may appeal to the Royal Court against that decision on the grounds that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section shall be instituted -

(a) within 28 days of the date on which notice in writing of the decision was served by the Policy Council on the person to whom the decision relates, or such later date as the Royal Court may for good cause allow, and

(b) by a summons served on the Policy Council stating the grounds, and setting out the material facts, on which the appellant relies.

(4) If an appeal under this section has not been determined by the Royal Court within three months of the date of the summons by which it was instituted, the Policy Council may apply to the Royal Court, by a summons served on the appellant, to show cause why the appeal should not be dismissed for want of prosecution; and upon the making of such an application the Royal Court may dismiss the appeal or make such other order as it considers just.

(5) On an appeal under this section the Court may -

(a) set the decision of the Policy Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(6) A decision of the Royal Court under this section shall be final as to any question of fact, but an appeal from such a decision shall lie to the Court of Appeal on any question of law within such period and in such manner as may be prescribed by Order of the Royal Court.

(7) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.

Special Court Procedures.

25. (1) The States may by Ordinance provide for special court procedures to be followed in any proceedings -

- (a) under this Law,
- (b) under any other enactment concerning the freezing of assets, or
- (c) under other measures giving effect to international sanctions.

(2) An Ordinance under subsection (1) may, without limitation, make provision in relation to the following matters -

- (a) the mode of proof and evidence in the proceedings,
- (b) the disclosure of evidence and any other matter relating to the proceedings,
- (c) the determination of the proceedings, or any issue in the proceedings, including determination -

- (i) without a hearing,
 - (ii) without the provision to any party to the proceedings (or to the legal representative of any such party) of full particulars of the reasons for any decision relating to the proceedings or issue, and
 - (iii) in the absence of any person, including any party to the proceedings (or the legal representative of any such party),
- (d) legal representation in the proceedings,
 - (e) rights of audience in the proceedings,
 - (f) the establishment of a tribunal or other body with powers to determine the proceedings, and
 - (g) the authorisation of, and conferring of functions on, any court, tribunal or other body in order to enable any such court, tribunal or body to determine the proceedings or any issue in the proceedings.

(3) The Royal Court must be consulted in connection with any Ordinance made under this section.

PART V OFFENCES

Penalties.

26. (1) A person guilty of an offence under section 9(3), 10(2), 11(3), 12(2), 13(3), or 16(2) is liable –

(a) an conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 4 on the uniform scale or to both.

(2) A person guilty of an offence under section 8(6) or 15(6) or (7) is liable –

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 4 on the uniform scale or to both.

(3) A person guilty of an offence under section 17(5) or 20(1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 4 on the uniform scale or to both.

Extra-territorial application of offences.

27. (1) An offence under this Law may be committed by conduct wholly or partly outside the Bailiwick by -

- (a) a UK national who is ordinarily resident in the Bailiwick, or
- (b) a body incorporated or constituted under the law of the Bailiwick or any part thereof.

(2) In subsection (1) "**UK national**" means -

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen all within the meaning of the British Nationality Act 1981^j,
- (b) a person who under that Act is a British subject, or
- (c) a British protected person within the meaning of that Act.

(3) In this section "**conduct**" includes acts and omissions.

(4) Nothing in this section affects any criminal liability arising otherwise than under this section.

^j An Act of Parliament (1981 c.61).

Offences by bodies corporate, etc.

28. (1) Where an offence under this Law is committed by a body corporate or by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to or to have been facilitated by any neglect on the part of, any director, manager, member of any committee of management or other controlling authority, secretary or other similar officer or partner of the body, or any person purporting to act in any such capacity, he as well as the body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Proceedings for an offence alleged to have been committed under this Law by an unincorporated body shall be brought in the name of that body and not in the name of any of its members, and a fine imposed on the body on its conviction of such an offence shall be paid out of its funds.

(4) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

Jurisdiction to try offences.

29. Where an offence under this Part is committed outside the Bailiwick-

- (a) proceedings for the offence may be taken in Guernsey,
and

- (b) the offence may for all incidental purposes be treated as having been committed in Guernsey.

PART VI
INTERPRETATION

Meaning of "funds" and "economic resources".

30. (1) In this Law, "**funds**" means financial assets and benefits of every kind, including, without limitation -

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments,
- (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations,
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products,
- (d) interest, dividends and other income on or value accruing from or generated by assets,
- (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments,
- (f) letters of credit, bills of lading and bills of sale,

- (g) documents providing evidence of an interest in funds or financial resources,
- (h) any other instrument of export financing.

(2) In this Law, "**economic resources**" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

Meaning of "financial services".

31. (1) In this Law, "**financial services**" means any service of a financial nature, including (but not limited to) -

- (a) insurance-related services consisting of -
 - (i) direct life assurance,
 - (ii) direct insurance other than life assurance,
 - (iii) reinsurance and retrocession,
 - (iv) insurance intermediation, such as brokerage and agency,
 - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services,
- (b) banking and other financial services consisting of -

- (i) accepting deposits and other repayable funds,
- (ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions),
- (iii) financial leasing,
- (iv) payment and money transmission services (including credit, charge and debit cards, travellers' cheques and bankers' drafts),
- (v) providing guarantees or commitments,
- (vi) financial trading (as defined in subsection (2)),
- (vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues,
- (viii) money brokering,
- (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services,

- (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments),
 - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services),
 - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in subparagraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy),
- (c) any finance business within the meaning of section 24 of the Financial Services Commission (Bailiwick of Guernsey) Law 1987 and not included in subsection (1)(a) and (b).

(2) In subsection (1)(b)(vi), "**financial trading**" means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in -

- (a) money market instruments (including cheques, bills and certificates of deposit),
- (b) foreign exchange,

- (c) derivative products (including futures and options),
- (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements),
- (e) transferable securities, or
- (f) other negotiable instruments and financial assets (including bullion).

Meaning of "relevant institution".

32. (1) In this Law, "**relevant institution**" means -

- (a) a person (whether or not an individual) that carries on financial services business in or from the Bailiwick, or
- (b) a person (not being an individual) who is incorporated or constituted under the law of the Bailiwick or any part thereof and carries on financial services business in any part of the world.

(2) For the purposes of subsection (1), "**financial services business**" has the same meaning as in the Criminal Justice (Proceeds of Crime)

(Bailiwick of Guernsey) Law, 1999^k.

Interpretation: general.

33. (1) In this Law, unless the context otherwise requires -

"**advocate**" means an Advocate of the Royal Court of Guernsey,

"**Bailiff**" includes the Deputy Bailiff, a Lieutenant Bailiff and any Judge of the Royal Court,

"**Bailiwick**" means the Bailiwick of Guernsey,

"**British overseas territory**" has the same meaning as in the British Nationality Act 1981,

"**community provision**" has the meaning given by section 3(1) of the the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^l,

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

^k Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005; No. XV of 2007 and No. XIII of 2010; Recueil d'Ordonnances Tome XXVIII, pp. 266 and 274; Tome XXIX, pp. 112 and 406 and Tome XXXII, p. 666; Ordinance No. XXXVII of 2008 and Nos. XVI and XXXIV of 2010; G.S.I. No. 27 of 2002; No. 43 of 2006; No. 33 of 2007; Nos. 48 and 73 of 2008 and No. 12 of 2010.

^l Ordres en Conseil Vol. XXXV(1), p. 65.

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

"**customs officer**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972ⁿ,

"**designated person**" has the meaning given by section 1,

"**document**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include producing a copy of the information in legible form,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**economic resources**" has the meaning given by section 30(2),

"**final designation**" means a designation under section 4 (including any renewed such designation),

"**financial services**" has the meaning given by section 31,

"**funds**" has the meaning given by section 30(1),

"**Her Majesty's Procureur**" includes Her Majesty's Comptroller,

"**interim designation**" means a designation under section 2,

ⁿ Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278 and Vol. XXXIII, p. 217; Order in Council No. X of 2004.

"international sanctions" include sanctions adopted by the Security Council of the United Nations and sanctions under any community provision,

"Jersey" means the Bailiwick of Jersey,

"the Office of the Legal Aid Administrator" means the office established under section 2(1) of the Legal Aid (Bailiwick of Guernsey) Law, 2003⁰

"police officer" means -

- (a) a member of the salaried police force of the Island of Guernsey, and
- (b) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey, and

includes a customs officer,

"relevant institution" has the meaning given by section 32,

"relevant Security Council resolutions" means -

- (a) resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001,

⁰ Order in Council No. VI of 2004 and see Recueil d'Ordonnances Tome XXIX, p. 406.

- (b) resolution 1452 (2002) adopted by the Security Council of the United Nations on 20th December 2002, and
- (c) such other resolution as the Policy Council may by order prescribe,

"**renew**" means, in respect of a final designation, renew under section 5,

"**the Royal Court**" means the Royal Court of Guernsey sitting as an Ordinary Court and for the purposes of this Law the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats,

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

"**subordinate legislation**" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"**terrorism**" has the same meaning as in the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^P, 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^Q.

^P Order in Council No. XVI of 2002.

^Q Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

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

(3) A reference in this Law to any enactment, to the relevant Security Council resolutions and any Act of Parliament is a reference to that enactment, those resolutions and that Act as amended from time to time.

PART VII MISCELLANEOUS

Service of notices.

34. (1) This section applies in relation to any notice to be given to a person by the Policy Council under this Law.

(2) Any such notice may be given -

(a) by posting it to the person's last known address, or

(b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office of the body or partnership concerned.

(3) Where the Policy Council does not have an address for the person, it must make arrangements for the notice to be given to the person at the first available opportunity.

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

Delegation.

35. (1) The Policy Council may, by instrument in writing, delegate wholly or partly any of its functions under this Law to any other person or to any body.

(2) The delegation may be unconditional or subject to any condition specified in the instrument of delegation.

(3) The delegation of functions by the Policy Council under this section shall not prevent the Policy Council from itself performing those functions.

(4) Where any licence, permit or authorization is granted in purported performance of a function delegated under subsection (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the function had not been delegated, or that any requirement attached to the delegation of the function had not been complied with.

(5) Nothing in this section affects the operation of section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law 1991^s.

Consequential amendments.

36. The Schedule (amendments consequential on this Law) shall have effect.

Power to give effect by Ordinance.

37. (1) The States may by Ordinance make such additional or alternative provision as they think fit for the purposes of giving effect to the

^s Ordres en Conseil Vol. XXXIII, p. 478.

relevant Security Council resolutions throughout the Bailiwick including, without limitation, provision amending this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).

General provisions as to Ordinances and orders.

38. (1) An Ordinance or order under this Law -
- (a) may be amended or repealed by a subsequent Ordinance or order hereunder, and
 - (b) in the case of an Ordinance, may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).
- (2) Any power to make an Ordinance or order 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, or
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) An order (other than rules or an order of a court or tribunal) under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the order be annulled, then the order shall cease to have effect, but without prejudice to anything done under the order or to the making of a new order.

Citation and commencement.

39. (1) This Law may be cited as the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011.

(2) This Law shall come into operation on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes.

SCHEDULE
AMENDMENTS CONSEQUENTIAL ON THIS LAW

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

1. In the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 -

- (a) in section 49(6), in the definition of money laundering, immediately after "section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002", insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law 2011",
- (b) in section 49A(6), in the definition of money laundering, immediately after "section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002" insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law 2011".

Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

2. In section 79(1) of the Terrorism and Crime (Bailiwick of Guernsey) Law 2002, in the definition of terrorist financing, immediately after "section 8, 9, 10 or 11", insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law 2011".

Transfer of Funds (Guernsey) Ordinance, 2007.

3. In section 10(1) of the Transfer of Funds (Guernsey) Ordinance, 2007^t -

- (a) in subparagraph (vi), omit "or", and
- (b) immediately after subparagraph (vii), insert -

"or

(viii) the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011, or

(ix) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011, ".

Transfer of Funds (Alderney) Ordinance, 2007.

4. In section 10(1) of the Transfer of Funds (Alderney) Ordinance, 2007^u -

- (a) in subparagraph (vi), omit "or", and
- (b) immediately after subparagraph (vii), insert -

"or

^t Recueil d'Ordonnances Tome XXXII, p. 194.

^u Alderney Ordinances No. VI of 2007.

- (viii) the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011, or
- (ix) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011, ".

Transfer of Funds (Sark) Ordinance, 2007.

5. In section 10(1) of the Transfer of Funds (Sark) Ordinance, 2007^v -

- (a) in subparagraph (vi), omit "or", and
- (b) immediately after subparagraph (vii), insert -

"or

- (viii) the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011, or
- (ix) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011, ".

Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007.

6. In regulation 19(1) of the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007^w, in subparagraph (a) of the definition of "terrorist financing", immediately after

^v Folio No. 157.

^w G.S.I. No. 33 of 2007.

"section 8, 9, 10 or 11 of the Terrorism Law" insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011".

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008.

7. In regulation 30(1) of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008^x, in subparagraph (a) of the definition of "terrorist financing", immediately after "section 8, 9, 10 or 11 of the Terrorism Law" insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011".

^x G.S.I. No. 49 of 2008.

**The Income Tax (Exemption of Benefits)
(Amendment) Ordinance, 2011**

THE STATES, in pursuance of their Resolution of the 24th November, 2010^a, and in exercise of the powers conferred on them by sections 8(2A)(b) and 203A of the Income Tax (Guernsey) Law, 1975, as amended^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of 1995 Ordinance.

1. In section 2 of the Income Tax (Exemption of Benefits) Ordinance, 1995, as amended^c -

(a) the text is numbered as subsection (1), and

^a Article IX of Billet d'État No. XXIII of 2010 (Volume 1).

^b Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No's. VII and XXI of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; No. XXI of 2007; the Income Tax (Zero 10) (Guernsey) Law, 2007; the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007; No. XXVI of 2008; the Income Tax (Guernsey) (Amendment) Law, 2008; the Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009; the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009; the Income Tax (Guernsey) (Amendment) Law, 2009; and the Income Tax (Guernsey) (Amendment) Law, 2010. Also amended by Ordinance No. XXXIII of 2003 and Ordinance No. VII of 2009.

^c Ordinance No. XXIX of 1995; amended by No. XIX of 1998; No. XXXII of 1999; No. XV of 2001; No. XXX of 2003; and the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009).

- (b) after subsection (1), as so numbered, insert the following subsection -

"(2) The Department may by regulation prescribe limitations, conditions, restrictions and qualifications in relation to any description of benefits, or any circumstances, specified in subsection (1).".

2. In section 3 of the Income Tax (Exemption of Benefits) Ordinance, 1995, as amended, in the definition of "approved pension scheme", after "section 151(2) of the Law" insert "or a retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax in accordance with the provisions of section 157A(2) or (4) of the Law".

Citation.

3. This Ordinance may be cited as the Income Tax (Exemption of Benefits) (Amendment) Ordinance, 2011.

Commencement.

4. This Ordinance shall come into force on the 27th April, 2011 and shall have effect in respect of any year of charge after 2010.

Article IV

**The Evidence in Civil Proceedings
(Guernsey and Alderney) Law, 2009
(Commencement) Ordinance, 2011**

THE STATES, in exercise of the powers conferred on them by section 27 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009^a, hereby order:-

Commencement of Law of 2009.

1. The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009 shall come into force on the 28th April, 2011.

Citation.

2. This Ordinance may be cited as the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009 (Commencement) Ordinance, 2011.

^a Order in Council No. X of 2010.

Article V

The Live-Link Evidence in Civil Proceedings (Guernsey and Alderney) Ordinance, 2011

THE STATES, in pursuance of their Resolution of the 27th February, 2008^a, and in exercise of the powers conferred on them by sections 23 and 24 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009^b, and all other powers enabling them in that behalf, hereby order:-

Making and effect of live-link evidence direction in civil proceedings, etc.

1. (1) In civil proceedings before any court in Guernsey or Alderney, that court may give a direction ("**a live-link evidence direction**") that any specified witness in those proceedings, including a party to the proceedings, is to give his evidence from a location other than the courtroom ("**the remote location**") if the court is satisfied (having regard to any ancillary requirements which might be attached under subsection (5)) that the conditions set out in subsection (2) are fulfilled.

(2) Those conditions are that -

- (a) the parties have been afforded the opportunity to make representations to the court,
- (b) all necessary equipment is or will be in place, and all necessary arrangements have been or will be made, so that -

^a Article VIII of Billet d'État No. II of 2008.

^b Order in Council No. X of 2010.

- (i) the witness can (subject to subsection (3)) be clearly seen and heard by the court, the Greffier or clerk of the court, each of the parties and counsel for each of the parties, and
- (ii) the court, each of the parties and counsel for each of the parties can (subject to subsection (3)) be clearly seen and heard by the witness, and
- (c) it is in the interests of justice that a live-link evidence direction should be given.

(3) The conditions in subsection (2)(b) do not prevent the court from making any order which it might otherwise make for the purpose of screening or obscuring a party from the view of, or otherwise affording protection to, a vulnerable witness.

(4) For the avoidance of doubt, any party may apply to the court to give a live-link evidence direction, but the court may also give such a direction (subject to subsection (2)(a)) of its own motion.

(5) A court may attach ancillary requirements to a live-link evidence direction, when making the direction or subsequently, and may subsequently alter any such requirements or revoke the direction.

(6) The reference to ancillary requirements in subsection (5) includes -

- (a) requiring any party, in addition to paying the appropriate fees under any relevant rules of court, at that party's expense to -
 - (i) identify and secure access to an appropriate remote location,
 - (ii) ensure that all necessary equipment is in place and that all necessary arrangements have been made to satisfy the court that the conditions set out in subsection (2)(b) are fulfilled,
- (b) orders as to the payment of costs, including orders in respect of wasted costs if a party fails to comply with such ancillary requirements.

(7) If, having considered representations of the parties to any civil proceedings in accordance with subsection (2)(a), the court is satisfied as mentioned in subsection (1) but -

- (a) one or more of the parties continues to oppose the giving of a live-link evidence direction, and
- (b) in the opinion of the court the interests of justice can equally be achieved by an order under this subsection,

then, instead of giving the direction, the court may direct that the full costs incurred in connection with attendance of the witness concerned in the courtroom are to be paid, in any event, by that party or those parties.

Effect of live-link evidence direction in civil proceedings.

2. (1) A witness who gives evidence in civil proceedings pursuant to a live-link evidence direction is deemed for all purposes to be physically present in the accustomed place from which witnesses give evidence in the courtroom where those proceedings are being conducted.

(2) A person who is to give, or who has given, evidence in civil proceedings pursuant to a live-link evidence direction is deemed for all purposes to be a person who is to be, or who has been, physically present as described in subsection (1).

(3) Accordingly, and without limiting the generality of subsections (1) and (2) but by way of example -

- (a) the court has the like powers for securing the attendance of the witness at the specified remote location (if within the court's jurisdiction) as it has for securing the attendance of a witness at the courtroom,
- (b) the court may take the evidence of the witness on oath or affirmation,
- (c) the witness may produce any document or article which is in fact present in the courtroom by identifying it from the remote location; but the court may also receive in evidence an image, transmitted to the courtroom from the remote location, of any document or article identified there by the witness,

- (d) the witness cannot be compelled to answer any question, nor to produce any document or article, which he could not be compelled to answer or produce as a witness physically present in the courtroom,
- (e) every immunity or privilege (for example as respects the law of defamation) which would attach to a statement made by a witness physically present in the courtroom similarly attaches to any statement made by a witness at the remote location (even if the remote location is beyond the court's jurisdiction), but equally
- (f) every liability (for example, as respects contempt of court or perjury) which may arise out of any statement made or thing done or omitted by a witness physically present in the courtroom, may similarly arise out of any statement made or thing done or omitted by a witness at the remote location (even if the remote location is beyond the court's jurisdiction).

Interpretation.

3. (1) In this Ordinance, unless the context requires otherwise -

"**civil proceedings**" has the meaning given in the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009, as adapted for clarification by subsection (2),

"**live-link evidence direction**" means a direction given under section 1(1),

"remote location" means a location other than the courtroom, which may, however, be within the same building as the courtroom, elsewhere within the Bailiwick of Guernsey, or anywhere else in the world,

"specified" means individually identified in, or identifiable by reference to a description of person set out in, a live-link evidence direction, and

"witness" includes an expert witness, a witness as to fact, and any other person called upon by a party or by the court to provide any information or opinion which may be relevant to the determination of any issue before the court at any stage of proceedings.

(2) It is hereby declared for the sake of clarity that references in the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009, and in this Ordinance, to "civil proceedings" include every stage in civil proceedings, from their inception until and including any appeal, in which a witness may be called upon.

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Ordinance.

(4) 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.

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

Repeal.

4. The following provisions of the Live-Link Evidence (Bailiwick of Guernsey) Ordinance, 2008^d are repealed -

- (a) section 3,
- (b) the definition of "**civil proceedings**" in section 4(1),
- (c) section 4(2)(a),
- (d) in section 5, all the words after "Bailiwick", and
- (e) section 7(2).

Extent.

5. This Ordinance has effect in the islands of Guernsey and Alderney.

Citation.

6. This Ordinance may be cited as the Live-Link Evidence in Civil Proceedings (Guernsey and Alderney) Ordinance, 2011.

Commencement.

7. This Ordinance shall come into force on the on the date on which the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009 comes into force.

^d Ordinance No. XI of 2008.

*ORDINANCE LAID BEFORE THE STATES***The Tunisia (Freezing of Funds)
(Guernsey) Ordinance, 2011**

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^b, and all other powers enabling the States in that behalf, hereby orders:-

Application of, and infringement of, EU Regulation.

1. (1) Council Regulation (EC) No. 101/2011 of the 4th February, 2011^c imposing certain specific restrictive measures in view of the situation in Tunisia ("**the EU Regulation**") is, subject to such exceptions, adaptations and modifications as may be specified in this Ordinance, applicable in Guernsey in all respects as if Guernsey were a Member State.

(2) A person who infringes, or causes or permits any infringement of, Article 2.2 or 2.3 of the EU Regulation is guilty of an offence.

Modification of Regulation.

2. The EU Regulation in its application to Guernsey is modified as follows -

^a Ordres en Conseil Vol. XXXV(1), p. 65.

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

^c OJ L 31, 5.2.2011, p.1.

- (a) Articles 1(e) and 14 shall not apply,
- (b) in Articles 4.1 and 5.1, for the words "the competent authorities in the Member States, as listed in Annex II" substitute "the States of Guernsey Policy Council ("the Policy Council")",
- (c) in Articles 4.1(d), 4.2, 5.2, 7(b) and 10, references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council,
- (d) in Article 6.2 -
 - (i) for the words, "the Union" substitute "Guernsey", and
 - (ii) for the words, "the relevant competent authority" substitute "the Policy Council",
- (e) in Article 7 -
 - (i) for "the competent authorities in the Member States, as indicated on the websites listed in Annex II" substitute "the Policy Council", and
 - (ii) for the words "competent authority concerned" substitute "the Policy Council",
- (f) in Article 9 -

- (i) in paragraph (a), for the words "competent authority in the member State where they are resident or located, as indicated on the websites listed in Annex II, and shall transmit such information, either directly or through the Member States, to the Commission" substitute "the Policy Council", and
 - (ii) in paragraph (b), for the words "that competent authority" substitute "the Policy Council", and
- (g) in Article 15 -
- (i) in paragraph (a), for "the territory of the Union, including its airspace" substitute "Guernsey, including its airspace and its territorial waters adjacent thereto",
 - (ii) in paragraph (b), the reference to a Member State shall be construed as including Guernsey,
 - (iii) in paragraph (d), the reference to the law of a Member State shall be construed as including the law of Guernsey, and
 - (iv) in paragraph (e), the reference to the Union shall be construed as including Guernsey.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under Article 4, 5 or 7 of the EU Regulation, or a decision of the Policy Council not to exercise its powers under any of those Articles, may appeal to the Ordinary Court against that decision on the grounds that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(2) On an appeal under this section the Court may -

- (a) set the decision of the Policy Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(3) On an appeal under this section the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

Information.

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

Failure to provide information or to co-operate.

5. A person who, without reasonable excuse, fails to comply with the obligation to provide information to or co-operate with the Policy Council under Article 9.1 of the EU Regulation is guilty of an offence.

Furnishing of false information etc.

6. A person who in purported compliance with Article 9.1 of the EU Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

Penalties and proceedings.

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

- (a) section 1(2), 5 or 6, or
- (b) paragraph 2(b) or (c) of the Schedule,

is liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both,

- (ii) 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.

(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 Laws and excise Laws applicable.

8. (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 1 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

^d Ordres en Conseil Vol. XXIII, p. 573; No. XIII of 1991; and No. X of 2004.

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

Interpretation.

9. (1) In this Ordinance, except where the context requires otherwise -

"**Bailiff**" includes the Deputy Bailiff, a Lieutenant Bailiff and any Judge of the Royal Court,

"**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,

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

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

"**Ordinary Court**" means the Royal Court of Guernsey sitting as an Ordinary Court and for the purposes of this Law the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats,

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

"uniform scale of fines" means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^e,

and other terms used in this Ordinance and the EU Regulation shall have the same meaning as in the EU Regulation.

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

Citation.

10. This Ordinance may be cited as the Tunisia (Freezing of Funds) (Guernsey) Ordinance, 2011.

Commencement.

11. This Ordinance shall come into force on the 21st February 2011.

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

SCHEDULE

Section 4

INFORMATION

1. (1) The Policy 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) such information and documents in his possession or control as the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU 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 is 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 Policy Council, to the European Commission or to any of the competent authorities listed in Annex II to the EU Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EU 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.

ORDINANCE LAID BEFORE THE STATES

**The Libya (Restrictive Measures)
(Guernsey) Ordinance, 2011**

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^b, and all other powers enabling the States in that behalf, hereby orders:-

Application of, and infringement of, EU Regulation.

1. (1) Council Regulation (EC) No. 204/2011 of the 2nd March, 2011^c concerning restrictive measures in view of the situation in Libya ("**the EU Regulation**") is, subject to such exceptions, adaptations and modifications as may be specified in this Ordinance, applicable in Guernsey in all respects as if Guernsey were a Member State.

(2) A person who infringes, or causes or permits any infringement of, Article 2, 3, 4 or 5 of the EU Regulation is guilty of an offence.

Modification of Regulation.

2. The EU Regulation in its application to Guernsey is modified as follows -

^a Ordres en Conseil Vol. XXXV(1), p. 65.

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

^c OJ L 58, 3.3.2011, p. 1.

- (a) Articles 1(g) and 18 shall not apply,
- (b) in Articles 2.4, 3.3 and 8, for "the competent authorities in the Member States as listed in Annex IV" substitute "the States of Guernsey Policy Council ("the Policy Council")",
- (c) in Article 4 -
 - (i) for "the customs territory of the Union" substitute "Guernsey",
 - (ii) immediately after "(EEC) No 2454/93", insert "and under or in accordance with the provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and any other enactment for the time being in force in Guernsey relating to customs or, as the case may be, excise ", and
 - (iii) for "competent customs authorities of the Member States concerned" substitute "Chief Officer of Customs and Excise for the time being appointed by the Policy Council in accordance with section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972",
- (d) in Article 7.1, for "the competent authorities in the Member States as identified on the websites listed in

Annex IV" substitute "the Policy Council",

- (e) in Article 7.2 –
 - (i) for "the competent authorities in the Member States, as indicated on the websites listed in Annex IV" substitute "the Policy Council", and
 - (ii) in paragraph (b), for "the competent authority" substitute "the Policy Council",
- (f) in Articles 7, 8 and 10, references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council,
- (g) in Article 9 -
 - (i) for "the Union" substitute "Guernsey", and
 - (ii) for "the relevant competent authority" substitute "the Policy Council",
- (h) in Article 10 -
 - (i) for "the competent authorities in the Member States, as indicated on the websites listed in Annex IV" substitute "the Policy Council", and
 - (ii) in paragraph (a), for "competent authority concerned" substitute "the Policy Council",

- (i) in Article 12, immediately after "or any Member State" insert "or the Policy Council",
- (j) in Article 13 -
 - (i) in paragraph 1(a), for "the competent authority in the Member State where they are resident or located, as indicated on the websites listed in Annex IV, and shall transmit such information, either directly or through the Member States, to the Commission" substitute "the Policy Council", and
 - (ii) in paragraph 1(b), for "that competent authority" substitute "the Policy Council", and
- (k) in Article 19 -
 - (i) in paragraph (a), for "the territory of the Union, including its airspace" substitute "Guernsey, including its airspace and its territorial waters adjacent thereto",
 - (ii) in paragraph (b), the reference to a Member State shall be construed as including Guernsey,
 - (iii) in paragraph (d), the reference to the law of a Member State shall be construed as including the law of Guernsey, and

- (iv) in paragraph (e), the reference to the Union shall be construed as including Guernsey.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under Article 2, 3, 7, 8 or 10 of the EU Regulation, or a decision of the Policy Council not to exercise its powers under any of those Articles, may appeal to the Ordinary Court against that decision on the grounds that -

- (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.
- (2) On an appeal under this section the Court may -
- (a) set the decision of the Policy Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council with such directions as the Court thinks fit, or
 - (b) confirm the decision, in whole or in part.

(3) On an appeal under this section the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

Information.

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

Failure to provide information or to co-operate.

5. A person who, without reasonable excuse, fails to comply with the obligation to provide information to or co-operate with the Policy Council under Article 13.1 of the EU Regulation is guilty of an offence.

Furnishing of false information etc.

6. A person who in purported compliance with Article 13.1 of the EU Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

Penalties and proceedings.

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

(a) section 1(2), 5 or 6, or

(b) paragraph 2(b) or (c) of the Schedule,

is liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both,
- (ii) 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.

(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 Laws and excise Laws applicable.

8. (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 1 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, 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.

Interpretation.

9. (1) In this Ordinance, except where the context requires otherwise -

"Policy 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,

"EU Regulation" has the meaning given by section 1,

"Guernsey" means the Bailiwick of Guernsey apart from the Islands

^d Ordres en Conseil Vol. XXIII, p. 573; Vol. XXXIII, p. 217; and No. X of 2004.

of Alderney and Sark,

"Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court, and

"uniform scale of fines" means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^e,

and other terms used in this Ordinance and the EU Regulation shall have the same meaning as in the EU Regulation.

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

Citation.

10. This Ordinance may be cited as the Libya (Restrictive Measures) (Guernsey) Ordinance, 2011.

Commencement.

11. This Ordinance shall come into force on the 4th March, 2011.

^e Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

SCHEDULE

Section 4

INFORMATION

1. (1) The Policy 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) such information and documents in his possession or control as the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU 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 is 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 Policy Council, to the European Commission or to any of the competent authorities listed in Annex IV to the EU Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EU 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.