

BILLET D'ÉTAT No.V, 2012

6th March, 2012

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PROJET DE LOI

ENTITLED

The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012

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PROJET DE LOI

ENTITLED

The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012

THE STATES, in pursuance of their Resolution of the 6th day of March, 2012^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

PROHIBITION OF UNLICENSED FISHING

Prohibition of fishing without a licence.

1. (1) Subject to subsection (2), fishing for any sea fish within Bailiwick fishery limits by British fishing boats is prohibited unless authorised by a licence granted by the States of Guernsey Commerce and Employment Department ("**the Department**") and for the time being in force.

(2) The prohibition in subsection (1) does not apply to fishing -

(a) for salmon or migratory trout,

(b) by any vessel used wholly for the purpose of conveying persons wishing to fish for pleasure,

^a Article * of Billet d'État No. ** of 2012.

- (c) for common eels (*Anguilla anguilla*) by any vessel whose length is not more than 10 metres,
 - (d) by any vessel whose length is not more than 10 metres and which does not have an engine to power it.
- (3) The Department may by regulation amend subsection (2).
- (4) Nothing in subsection (1) -
- (a) restricts the carrying on of any operations which, under the authority of the Department, are conducted for the purpose of scientific investigation or for the purpose of transplanting sea fish from one fishing ground to another, or
 - (b) restricts the landing of sea fish caught in the course of any such operations.
- (5) Subsection (4) has effect in addition to, and not in derogation from, any express saving or exemption provided by or under this Law or any other enactment.
- (6) The Department may make regulations in respect of applications for authority under subsection (4), and any such regulations may include provision as to -
- (a) the manner in which, and time before which, any such application is to be made, and

- (b) the charging of a reasonable fee by the Department for dealing with an application (and section 5(4) applies with appropriate modifications in relation to regulations under this paragraph as it applies in relation to regulations under section 5(3)).

General provisions as to licences.

2. (1) A licence shall be granted to the owner or charterer in respect of a named vessel and may authorise fishing generally or may confer limited authority by reference to, in particular -

- (a) the area within which fishing is authorised,
- (b) the periods, times or particular voyages during which fishing is authorised,
- (c) the descriptions and quantities of fish which may be taken, or
- (d) the method of sea fishing.

(2) A licence may authorise fishing unconditionally or subject to such conditions as may appear to the Department to be necessary or expedient for the regulation of sea fishing (including conditions which do not relate directly to fishing), and in particular a licence may contain conditions -

- (a) as to the landing of fish or parts of fish taken under the authority of the licence (including specifying the ports at which the catch is to be landed), or

(b) as to the use to which the fish taken may be put.

(3) The conditions subject to which a licence may be granted include conditions imposed for the purposes of -

(a) conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas, or

(b) conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.

(4) The conditions subject to which a licence may be granted may differ as between different vessels or between vessels of different descriptions.

(5) The licensing powers conferred on the Department by this Law may be exercised so as to limit the number of fishing boats, or of any class of fishing boats, engaged in fishing in any area, or in fishing in any area for any description of fish, to such extent as may appear to the Department to be necessary or expedient for the regulation of sea fishing.

(6) A licence under this section -

(a) may be varied from time to time, and

(b) may be revoked or suspended if it appears to the

Department -

- (i) to be necessary or expedient for the regulation of sea fishing, or
- (ii) to be appropriate in a case where there is an offence under this Law or any other enactment relating to the regulation of sea fishing.

(7) Where a condition of a licence prohibits fishing in a specified area for a specified description of sea fish, there must, except so far as the conditions of the licence provide otherwise, be returned to the sea forthwith -

- (a) any fish of that description taken on board a fishing boat in contravention of the condition, and
- (b) any fish of that description taken on board a fishing boat in that area in the course of fishing for sea fish of a different description,

but, where the condition applies only to fishing by a specified method or during a specified period or by boats of a specified description, paragraph (b) applies only if the fish are caught by that method, during that period or by a boat of that description.

(8) If a licence is varied, revoked or suspended the Department may, if it considers it appropriate in all the circumstances of the case, refund the whole or any part of any charge made for the licence.

Matters to be taken into account and duty to consult.

3. (1) In deciding whether or not to grant a licence the Department shall take into account any relevant factor, including (without limitation) -

(a) the record of the applicant in fishing in Bailiwick fishery limits, whether during any particular period or otherwise,

(b) whether the vessel in respect of which the application is made is registered -

(i) in the Bailiwick,

(ii) in Jersey or the Isle of Man, or

(ii) in the UK under Part II of the Merchant Shipping Act 1995^b,

or was so registered during any particular period,

(c) the terms of any fisheries management agreement or memorandum of understanding for the time being in force and made between all or any of the following parties and/or any other persons or bodies -

(i) the Department, the General Services Committee of the States of Alderney and the

^b An Act of Parliament (1995 c. 21).

Sea Fisheries Committee of the Chief Pleas of Sark,

- (ii) the Department for the Environment, Food and Rural Affairs and the devolved administrations of Scotland, Wales and Northern Ireland,
 - (iii) the Marine Management Organisation,
 - (iv) the authorities of Jersey and of the Isle of Man,
- (d) the provisions of any enactment, subordinate legislation or enforceable Community restriction relating to sea fishing having effect within the Bailiwick.

(2) Before the Department grants, varies (whether by imposing, varying or rescinding any condition of the licence or otherwise), revokes or suspends a licence, it shall consult the Bailiwick Fisheries Management Commission ("**the Commission**").

Provision of information.

4. The Department may require the master, owner and charterer (if any) of a vessel named in a licence to provide the Department with such information, in such form and manner, and within such time or at such times and intervals, as it may direct.

Regulations as to licences and charges for licences.

5. (1) The Department may by regulation make provision as to -

- (a) the manner in which a licence is to be granted or a variation, suspension or revocation effected,
- (b) the time when a licence or a variation, suspension or revocation has effect.

(2) Without prejudice to the generality of subsection (1), regulations thereunder may include provision -

- (a) for documents to be delivered, or notices to be given, to the nominees of persons to whom licences are granted,
- (b) for documents or notices to be treated as delivered or given if they are posted or otherwise communicated in accordance with the regulations,
- (c) for notices to be given by publication in newspapers or on websites,
- (d) as to the transitional effects of variations.

(3) The Department may by regulation prescribe charges for the granting of a licence.

(4) Regulations under subsection (3) may -

- (a) specify a maximum charge and different maxima in relation to different classes of licence,

- (b) make provision for no charge to be payable in such circumstances as may be specified in the regulations,
- (c) make provision for the amount of any charge to be specified in, or determined in accordance with the provisions of, the regulations, and
- (d) specify different charges, and make different provision, in relation to different classes of licence.

PART II

BRITISH SEA-FISHERY OFFICERS

Powers of British sea-fishery officers for enforcement of Law.

6. (1) For the purpose of enforcing the provisions of this Law a British sea-fishery officer may exercise the powers conferred by subsections (2) to (4) in relation to -

- (a) any British fishing boat within Bailiwick fishery limits,
- (b) any British fishing boat registered in the Bailiwick anywhere outside those limits.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of, or disembarkation from, the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry, and ask any

question, which appears to him to be necessary for the purpose mentioned in subsection (1) and, in particular -

- (a) he may search for and examine, and may test, any equipment of the boat, including the satellite tracking device and the fishing gear, and may search for and examine any fish on the boat, and require persons on board the boat to do anything which appears to him to be necessary for facilitating such a search, examination or test,
- (b) he may require any person on board the boat to produce any document relating to -
 - (i) the boat or its equipment,
 - (ii) any fishing operations or other operations ancillary thereto, or
 - (iii) the persons on board,which is in his custody or possession,
- (c) he may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search,
- (d) he may -

- (i) inspect,
- (ii) take copies of, and
- (iii) retain in his possession while he completes any search, examination, inspection and test provided for under this section,

any such document produced to him or found on board,

- (e) without prejudice to paragraphs (c) and (d), he may require the master and any person for the time being in charge of the boat to render any such document on a computer system or navigation system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away, and
- (f) where the boat is one in relation to which he has reason to suspect that an offence under this Law has been committed, he may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence,

but nothing in paragraph (f) permits any document required by law or by a condition of a licence to be carried on board the boat to be seized and detained except while the boat is detained in port.

(4) Where it appears to a British sea-fishery officer that an offence under this Law has at any time been committed within Bailiwick fishery limits, he may -

- (a) require the master of the boat in relation to which the offence was committed to take, or the officer may himself take, the boat and its crew to the port which appears to him to be the nearest convenient port, and
- (b) detain or require the master to detain the boat in the port,

and where a British sea-fishery officer detains or requires the detention of a boat he must serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

(5) The powers which may be exercised by a British sea-fishery officer under this Law in respect of any fishing boat include power to -

- (a) require any person on board the boat to produce -
 - (i) any automatic recording equipment or transmitting equipment used or purported to be used in accordance with an enforceable Community restriction relating to sea fishing or a condition of a licence,
 - (ii) any record produced by means of such equipment, or partly by those means and partly

by other means,

- (b) search the boat for any such equipment or record, and require any person on board the boat to do anything which appears to the officer to be necessary to facilitate the search,
- (c) examine and take copies of any such record,
- (d) seize and detain any such equipment or record for the purpose of enabling that equipment or record, or any record that may be produced by means of that equipment, to be used as evidence in proceedings for any offence,

but nothing in this subsection permits anything required by law or by a condition of a licence to be carried on board the boat to be seized and detained except while the boat is detained in port.

Powers of entry, search and seizure.

7. (1) A British sea-fishery officer may seize -

- (a) any fish in respect of which an offence under this Law has been or is being committed where the fish are on the fishing boat with or upon which the offence was or is being committed or are in the ownership or custody of, or under the control of, the owner, master or charterer (if any) of the fishing boat, and
- (b) any net or other fishing gear used in contravention of

this Law or any licence.

(2) A British sea-fishery officer, a person authorised in that behalf by the Department in writing or a special constable may, for the purpose of ascertaining whether an offence under this Law has been committed -

(a) enter at any reasonable time any premises (other than a dwelling house) used for carrying on any business in connection with -

(i) the operation of fishing boats or activities connected therewith or ancillary thereto, or

(ii) the treatment, storage or sale of sea fish,

(b) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, sale or disposal of any sea fish, and

(c) take copies of any such document,

and, if he has reason to suspect that an offence under this Law has been committed, he may also -

(i) search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search, and

- (ii) seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings in relation to the offence.

Exclusion of liability of British sea-fishery officers.

8. (1) A British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable is not liable in any civil or criminal proceedings for anything done or omitted to be done in the exercise or purported exercise of the powers conferred on him by this Law if the court is satisfied that the thing was done or omitted to be done in good faith and that there were reasonable grounds for doing or omitting to do it.

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^c.

**PART III
PROCEEDINGS, ETC**

Penalties.

9. (1) Where a fishing boat is used in contravention of section 1(1), the master, owner and charterer (if any) are each guilty of an offence and liable -

- (a) on conviction on indictment, to a fine,

^c Ordres en Conseil Vol. XL p. 396 as amended by Order in Council No. 1 of 2005 and G.S.I. No. 27 of 2006.

- (b) on summary conviction, to a fine not exceeding £50,000.

(2) Where a licence condition is contravened, the master, owner and charterer (if any) of the vessel named in the licence are each guilty of an offence and liable -

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding £50,000.

(3) A person who fails without reasonable excuse to comply with a requirement imposed under section 4 is guilty of an offence and liable -

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(4) Where section 2(7) is contravened in the case of any fishing boat, the master, owner and charterer (if any) are each guilty of an offence and liable -

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding £50,000.

Offences in relation to British sea-fishery officers.

10. (1) A person who -

- (a) fails without reasonable excuse to comply with a requirement imposed by, or to answer a question asked by, a British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable under this Law,
- (b) prevents or attempts to prevent another person from complying with any such requirement or answering any such question,
- (c) assaults a British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable who is exercising any power conferred by this Law, or
- (d) wilfully obstructs a British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable in the exercise of any such power,

is guilty of an offence and liable -

- (i) on conviction on indictment, to a fine, or
- (ii) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

and in the case of an assault under paragraph (c) the offender is liable, instead of or in addition to such a fine, to imprisonment for a term not exceeding two years on conviction on indictment or six months on summary conviction.

(2) Where a fine is imposed on the master, owner or charterer or a member of the crew of a fishing boat who is convicted of an offence under this section the court may by order authorise Her Majesty's Sheriff to seize, detain and sell the boat and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine.

(3) In subsection (2) "Her Majesty's Sheriff" means -

- (a) where the order referred to in that subsection is made by the Court of Alderney, the Greffier appointed under section 20 of the Government of Alderney Law, 2004^d, and
- (b) where the order is made by the Court of the Seneschal, the Prévôt.

False statements.

11. A person who, for the purpose of obtaining a licence, or in purported compliance with a requirement imposed by or under this Law, or in response to a question asked under this Law -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in

^d Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010).

a material particular,

- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence and 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 six months, to a fine not exceeding level 5 on the uniform scale, or to both.

Supplementary provisions in relation to criminal proceedings.

- 12.** (1) Subject to the following provisions of this section, the court

by or before which a person is convicted of an offence under section 9(1) or 9(2) may -

- (a) order that the owner or charterer (if any) of the vessel used to commit the offence or, as the case may be, the vessel named in the licence of which a condition is contravened, be disqualified for a specified period from holding a licence in respect of that vessel, and
- (b) order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence.

(2) A person guilty of an offence under section 9(1) or 9(2) is liable, subject to subsection (3), on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(3) A person is not liable to a fine under subsection (2) in respect of an offence if, under subsection (1), the court orders the forfeiture of the fish in respect of which the offence was committed; and, where a fine is imposed under subsection (2) in respect of an offence, the court does not have power under subsection (1) to order the forfeiture of the fish in respect of which the offence was committed.

(4) Subject to subsection (3), any fine to which a person is liable under subsection (2) in respect of an offence is in addition to any other penalty (pecuniary or otherwise) to which he is liable in respect of that offence under this Law or any other enactment.

Offences committed by bodies corporate.

13. (1) Where an offence under this Law is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) 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.

(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.

Offences committed by unincorporated bodies.

14. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid from the funds of the body.

Evidence.

15. (1) In any civil or criminal proceedings a written statement purporting to be a report made by a British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable on matters ascertained in the course of exercising his powers under this Law is admissible as evidence to the like extent as oral evidence to the like effect by him.

- (2) Where automatic recording equipment -
 - (a) is used or purported to be used in accordance with an enforceable Community restriction relating to sea fishing or a condition of a licence, or
 - (b) is used to record information transmitted or derived from equipment used or purported to be used in accordance with such a restriction or condition,

any record produced by means of the automatic recording equipment, or partly by those and partly by other means, is, in any proceedings for an offence under this Law, evidence of the matters appearing from the record.

(3) In any proceedings for an offence under this Law, any document which constitutes or contains -

- (a) an entry in any logbook kept, or purported to be kept, under an enforceable Community restriction relating to sea fishing or a condition of a licence, by the master of a vessel,
- (b) a declaration made, or purported to be made, under such a restriction or condition -
 - (i) as to fish landed, by the master of a vessel or by an agent,
 - (ii) as to trans-shipment, by the master of a vessel,
- (c) information provided, or purported to be provided -
 - (i) under an enforceable Community restriction relating to sea fishing or a condition of a licence, by the master, owner or charterer (if any) of a vessel or by an agent,
 - (ii) under a requirement imposed under section 4, by the master, owner or charterer (if any) of a vessel,

is admissible as evidence of the matters stated therein or appearing therefrom.

(4) Subsections (1), (2) and (3) are in addition to, and not in derogation from, any other enactment or rule of law relating to the reception or admissibility of documentary evidence.

Jurisdiction of court to try offences.

16. Proceedings for an offence under this Law may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

**PART IV
APPEALS**

Right of appeal.

- 17.** (1) A person aggrieved by a decision of the Department -
- (a) to refuse an application by him for a licence,
 - (b) to vary, suspend or revoke his licence, or
 - (c) to impose, vary or rescind any condition in respect of his licence,

may appeal to the Royal Court against the decision.

- (2) The grounds of an appeal under this section are 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 a period of 28 days immediately following the date of the Department's decision, and
- (b) by summons served on the Minister of the Department stating the grounds and material facts on which the appellant relies.

(4) The Department may, where an appeal under this section has been instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing such an application the Royal Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court may direct), or
- (b) make such other order as the Royal Court considers

just,

and the provisions of this subsection are without prejudice to -

- (i) the inherent powers of the Royal Court, and
- (ii) the provisions of rule 52 of the Royal Court Civil Rules, 2007^e.

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

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

(6) On an appeal under this section against a decision described in subsection (1)(b) or (c), the Royal Court may, upon the application of the appellant, and on such terms as the Royal Court thinks just, order that the decision or any part of the decision shall not have effect pending the determination of the appeal.

(7) In this section "**the Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats.

^e O.R.C. No. IV of 2007; amended by No. II of 2008.

(8) An appeal from a decision of the Royal Court made under this section lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal on a question of law.

(9) Section 21 of the Court of Appeal (Guernsey) Law, 1961^f ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

PART V MISCELLANEOUS

Exclusion of territorial seas adjacent to Alderney and Sark.

18. (1) This Law does not apply to the territorial seas adjacent to Alderney and Sark.

(2) However, the States of Alderney and the Chief Pleas of Sark may respectively by Ordinance provide that this Law or any of its provisions shall extend to the territorial seas adjacent to Alderney or Sark (as the case may be) subject to such exceptions, adaptations and modifications as may be prescribed in the Ordinance.

(3) The expression "**the territorial seas adjacent to Alderney and Sark**" is a reference to those seas as they are delimited at the date of commencement of this Law (that is, notwithstanding any extension of the limits of the territorial seas that may occur after that date, they extend to a line not exceeding 3 miles from the baselines from which the breadth of the territorial seas adjacent to those islands is measured, but not, in the case of Sark, beyond a line every point of

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

which is equidistant from the nearest points of such baselines and the corresponding baselines adjacent to Guernsey, Herm and Jethou).

Interpretation.

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

"Bailiwick" means the Bailiwick of Guernsey,

"Bailiwick fishery limits" means that part of British fishery limits not exceeding 12 miles from the baselines from which the breadth of the territorial sea adjacent to the Bailiwick is measured, but not extending beyond the median line, and excluding the territorial seas adjacent to Alderney and Sark,

"British fishery limits" means British fishery limits set by or under section 1 of the Fishery Limits Act 1976^g,

"British fishing boat" means a fishing boat which is -

- (a) registered in the Bailiwick,
- (b) registered in Jersey or the Isle of Man,
- (c) registered in the United Kingdom under Part II of the Merchant Shipping Act 1995^h,

^g An Act of Parliament (1976 c. 86); extended to the Bailiwick by United Kingdom S. I. 1989/2407.

^h An Act of Parliament (1995 c. 21).

- (d) where the boat would otherwise be required to be registered in a place mentioned in paragraph (a), (b) or (c), exempted from registration by the laws of that place, or
- (e) British owned,

"British owned", in relation to a fishing boat, means owned by a person who is for the purposes of Part II of the Merchant Shipping Act 1995 a person qualified to own a British ship, or owned by two or more persons any one of whom is for those purposes a person so qualified,

"British sea-fishery officer" means a person who is, by virtue of section 7 of the Sea Fisheries Act 1968ⁱ, a British sea-fishery officer (including, for the avoidance of doubt, a person appointed as a British sea-fisheries officer in relation to the Bailiwick by the States of Guernsey Policy Council),

"Commission" means the Bailiwick Fisheries Management Commission, and includes any successor body appointed by the Department, the General Services Committee of the States of Alderney and the Sea Fisheries Committee of the Chief Pleas of Sark, or by their respective governments,

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

ⁱ An Act of Parliament (1968 c. 77); extended to the Bailiwick of Guernsey by United Kingdom S. I. 1973/1319 as amended by S. I. 1989/2412.

"Department" means the States of Guernsey Commerce and Employment Department,

"Department for the Environment, Food and Rural Affairs" means the Department of Her Majesty's Government of that name and includes any other department in which the functions of that Department as to matters of mutual interest to Her Majesty's Government and the Bailiwick relating to fisheries are for the time being vested,

"enactment" includes an Act of Parliament, a Law, an Ordinance and any subordinate legislation,

"enforceable Community restriction" means a restriction or obligation to which section 2(1) of the European Communities Act 1972^j applies,

"fish" means sea fish,

"Fisheries Monitoring Centre" means a fisheries monitoring centre established under article 3.7 of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy^k,

"fishing boat" means a vessel of whatever size and in whatever way propelled for the time being employed in sea fishing or any operations ancillary thereto,

^j An Act of Parliament (1972 c. 68).

^k O.J. No. L 261, 20.10.93, p. 1.

"General Services Committee" of the States of Alderney includes any committee of the States of Alderney for the time being performing the functions conferred by or under this Law on the said General Services Committee,

"length", in relation to a vessel, means the length calculated and measured in accordance with the rules specified in Article 2(1) of Council Regulation (EEC) No. 2930/86 defining characteristics for vessels¹,

"licence" means a licence granted by the Department under section 1,

"master" includes, in relation to any vessel, the person for the time being in command or charge of the vessel,

"median line" means a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea adjacent to the Bailiwick is measured and the corresponding baselines of the Bailiwick of Jersey,

"migratory trout" means trout which migrate to or from the sea,

"mile" means an international nautical mile of 1852 metres,

"required information" means data relating to -

- (a) the fishing boat's identification,

¹ O.J. No. L 274, 25.9.86, p. 1.

- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of latitude and longitude within a margin of error of less than 500 metres and within a confidence interval of 99%, and
- (c) the date and time of the fixing of that position,

"Royal Court" : see section 17(7),

"satellite tracking device" means a device for sending required information to a Fisheries Monitoring Centre from a fishing boat via a satellite and land earth station,

"salmon" includes any fish of the salmon species,

"sea fish" means fish of any kind found in the sea, fresh or cured, including shellfish, and any parts of any such fish,

"Sea Fisheries Committee" of the Chief Pleas of Sark includes any committee of the Chief Pleas of Sark for the time being performing the functions conferred by or under this Law on the said Sea Fisheries Committee,

"shellfish" includes crustaceans and molluscs of any kind and any spat or spawn of shellfish,

"special constable" means -

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special

constabulary of the Island of Guernsey,

- (b) in relation to Alderney -
 - (i) within the limits of his jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004, and
 - (ii) any person authorised by the General Services Committee for the purposes of section 5 of the Fishing (Alderney) (Amendment) Ordinance, 1980,

- (c) in relation to Sark -
 - (i) within the limits of his jurisdiction, a special constable appointed by the Court of the Seneschal, and
 - (ii) the Constable, Assistant Constables and Vingtenier,

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

"territorial seas adjacent to Alderney and Sark" : see section 18,

"vessel" includes any ship or boat or any other description of vessel used in navigation,

"**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^m.

(2) The States of Deliberation may by Ordinance, following consultation by the Department with the General Services Committee of the States of Alderney and the Sea Fisheries Committee of the Chief Pleas of Sark, amend subsection (1) by varying or removing any definition contained in it or adding a definition to it.

(3) In this Law any reference to a logbook, declaration, document or required information includes, in addition to a logbook, declaration, document or required information in writing -

- (a) any map, plan, graph or drawing,
- (b) any photograph,
- (c) any data, however reproduced, received by a Fisheries Monitoring Centre from a satellite tracking device,
- (d) any disc, tape, soundtrack or other device in which sounds or other data (not being visual aids) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced

^m Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

therefrom, and

- (e) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

(4) The Interpretation (Guernsey) Law, 1948ⁿ applies to the interpretation of this Law throughout the Bailiwick.

(5) Any reference in this Law to any enactment, subordinate legislation, rule of court or Community instrument (within the meaning of section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973^o) is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

Repeal.

20. The Sea Fish Licensing (Guernsey) Ordinance, 2003^p is repealed.

Savings and transitional provisions.

21. (1) Any subordinate legislation made or other thing done under an enactment repealed by this Law, or having effect as if so made or done, which could have been made or done under this Law shall have effect, after the date of commencement of this Law, as if made or done under this Law.

(2) Anything in the process of being done under an enactment

ⁿ Ordres en Conseil Vol. XIII, p. 355.

^o Ordres en Conseil Vol. XXIV, p. 87.

^p Recueil d'Ordonnances Tome XXIX, p. 253.

repealed by this Law on the date of commencement of this Law may, to the extent that the same is required or authorised to be done under this Law, be continued under this Law.

- (3) Any reference in an enactment (however expressed) to -
- (a) a British fishing boat licensed, under and within the meaning of an enactment repealed by this Law, to fish for sea fish within Bailiwick fishery limits or any part thereof, or
 - (b) a licence or licensed (or any related expression) under and within the meaning of an enactment repealed by this Law,

shall be construed after the date of commencement of this Law as a reference to (as the case may require) -

- (i) a British fishing boat licensed to fish for sea fish within Bailiwick fishery limits or any part thereof, or
- (ii) a licence or licensed (or the equivalent related expression),

under and within the meaning of this Law.

(4) A person who immediately before the commencement of this Law held a licence under and within the meaning of an enactment repealed by this Law shall on the commencement of this Law be deemed to hold a licence under and

within the meaning of this Law, the provisions of which shall apply accordingly; and any conditions, restrictions or obligations subject to which he was licensed under the repealed enactment shall apply in respect of the licence under this Law which he is deemed to hold by virtue of this subsection.

(5) A reference, however expressed, in any enactment to an enactment or a provision of an enactment repealed by this Law shall, unless the contrary intention appears, be construed as a reference to this Law or (as the case may be) the corresponding provision of this Law.

(6) This section is in addition to and not in derogation from section 19 of the Interpretation (Guernsey) Law, 1948.

General provisions as to Ordinances and regulations.

- 22.** (1) An Ordinance or regulations under this Law -
- (a) may be amended or repealed by a subsequent Ordinance or subsequent regulations, as the case may be, hereunder,
 - (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to be necessary or expedient, and
 - (c) shall, in the case of regulations, be laid before a meeting of the States of Deliberation as soon as possible after being made; and if at that or the next meeting the States of Deliberation resolve that the regulations be annulled, the regulations shall cease to

have effect but without prejudice to anything done under them or to the making of new regulations.

(2) Any power conferred by this Law to make an Ordinance or regulations may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations of the Department under this Law shall be made after consultation with the General Services Committee of the States of Alderney and the Sea Fisheries Committee of the Chief Pleas of Sark.

Extent.

23. Subject to the provisions of section 18, this Law has effect throughout the Bailiwick.

Citation.

24. This Law may be cited as the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012.

Commencement.

25. This Law shall come into force on the day appointed by the States of Deliberation by Ordinance; and different days may be appointed for different provisions, different purposes and different areas of Bailiwick fishery limits.

**The Wireless Telegraphy and Related Matters (Deemed
Registration and Validation) (Bailiwick of Guernsey) Law,
2012**

WHEREAS certain statutory instruments made under the provisions of Acts of Parliament which have, or are intended to have, been extended to the Bailiwick of Guernsey do not have effect in the Bailiwick until they have been registered in the Royal Court;

AND WHEREAS certain instruments of that type relating to wireless telegraphy and television licensing that were believed to have been registered in the Royal Court, and thereby to have been given effect in the Bailiwick, have not been so registered;

AND WHEREAS certain instruments of that type commencing provisions of the Communications Act 2003^a have not been so registered, thereby casting doubt on the extension to the Bailiwick of the provisions of that Act listed in article 6 of the Communications (Bailiwick of Guernsey) Order 2003^b (as amended by the modifications set out in Schedule 2 to that Order);

NOW THEREFORE the States, in pursuance of their Resolution of ** March, 2012^c, have approved the following provisions which, subject to the

^a An Act of Parliament (c. 21).

^b United Kingdom S.I. 2003/3195, registered in the Royal Court on 19 January 2004. Amended by S.I. 2004/715; S.I. 2004/1116; S.I. 2005/856; and S.I. 2006/3325.

^c Article ** of Billet d'État No. * of 2012.

Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Deemed registration of certain United Kingdom statutory instruments.

1. The statutory instruments listed in Column 1 of Schedule 1 are deemed to have been registered in the Royal Court on the corresponding dates listed in Column 2, and the statutory instruments listed in Schedule 2 are deemed to have been registered in the Royal Court on 19 January 2004.

Validity of certain acts etc.

2. (1) Nothing done by or on behalf of a person in the purported discharge of functions or duties or in the purported exercise of powers or rights conferred by a statutory instrument listed in Column 1 of Schedule 1, on or after the corresponding date in Column 2, shall be deemed to be, or ever to have been, unlawful or invalid by reason only of the fact that at the time of that purported discharge or exercise, the statutory instrument in question had not been registered in the Royal Court.

(2) Subject to subsection (3), nothing done on or after 19 January 2004 by or on behalf of a person in the purported discharge of functions or duties, or in the purported exercise of powers or rights, arising from the provisions of the Communications Act 2003 ("**the 2003 Act**") as extended to the Bailiwick of Guernsey in modified form by the Communications (Bailiwick of Guernsey) Order 2003 ("**the 2003 Order**"), shall be deemed to be, or ever to have been, unlawful or invalid by reason only of the fact that at the time of that purported discharge or exercise, the statutory instruments listed in Schedule 2 had not been registered in the Royal Court.

(3) No person shall be guilty of an offence under the provisions of the 2003 Act as extended to the Bailiwick of Guernsey in modified form by the

2003 Order where the act or omission in question took place before the coming into force of this Law.

(4) Without prejudice to the generality of subsections (1) and (2), and for the avoidance of doubt, where -

- (a) a charge or tax has been levied or collected by a person acting in the purported discharge of functions or duties or in the purported exercise of powers or rights conferred by a statutory instrument listed in Schedule 1, or arising from the provisions of the 2003 Act as extended to the Bailiwick of Guernsey in modified form by the 2003 Order on the registration in the Royal Court of the statutory instruments listed in Schedule 2, and
- (b) that charge or tax was levied or collected on or after the corresponding date in Column 2 in the case of a statutory instrument listed in Schedule 1, and 19 January 2004 in the case of the statutory instruments listed in Schedule 2,

then it shall not be deemed to have been levied or collected unlawfully or invalidly by reason only of the fact that the statutory instrument or instruments in question had not been registered in the Royal Court at the time of that purported discharge or exercise.

Interpretation.

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

"the Royal Court" means the Royal Court of Guernsey sitting as a Full Court,

"the Secretary of State" includes any one of Her Majesty's Principal Secretaries of State, and

"statutory instrument" includes an order or regulations made -

- (a) by the Secretary of State, or
- (b) in exercise of powers conferred on any other office under an Act of Parliament.

(2) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of this Law throughout the Bailiwick.

Citation

4. This Law may be cited as the Wireless Telegraphy and Related Matters (Deemed Registration and Validation) (Bailiwick of Guernsey) Law, 2012.

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

SCHEDULE 1

<u>Column 1</u>	<u>Column 2</u>
Wireless telegraphy statutory instruments	
Wireless Telegraphy (Licence Charges) Regulations 2005 [S.I. 2005/1378]	6 June 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2005 [S.I. 2005/353]	7 March 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (No. 2) Regulations 2005 [S.I. 2005/1585]	4 July 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (No. 2) (Amendment) Regulations 2008 [S.I. 2008/237]	18 February 2008
Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) Regulations 2005 [S.I. 2005/3471]	9 January 2006
Wireless Telegraphy (Radio Frequency Identification Equipment) (Exemption) (Amendment) Regulations 2007 [S.I. 2007/1282]	14 May 2007
Wireless Telegraphy (Inspection and Restrictions on Use of Exempt Stations and Apparatus) Regulations 2005 [S.I. 2005/3481]	9 January 2006
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2007 [S.I. 2007/2084]	1 October 2007
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) (Amendment) Regulations 2007 [S.I. 2007/2440]	1 October 2007
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2009 [S.I. 2009/2517]	5 October 2009
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) (Amendment) Regulations 2010 [S.I. 2010/2761]	6 December 2010
Wireless Telegraphy (Licence Charges) (Amendment) (Channel Islands and Isle of Man) Regulations 2003 [S.I. 2003/2984]	1 December 2003

The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2006 [S.I. 2006/2894]	4 December 2006
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2007 [S.I. 2007/2326]	1 October 2007
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2008 [S.I. 2008/139]	18 February 2008
The Wireless Telegraphy (Licence Charges) (Amendment) (No. 2) Regulations [S.I. 2008/2106]	8 September 2008
Wireless Telegraphy (Exemption) Amendment Regulations 2006 [S.I. 2006/2994]	13 November 2006
Wireless Telegraphy (Exemption) Amendment Regulations 2008 [S.I. 2008/236]	18 February 2008
Wireless Telegraphy (Exemption) Amendment (No. 2) Regulations 2008 [S.I. 2008/2426]	6 October 2008
Wireless Telegraphy (Exemption and Amendment) Regulations 2010 [S.I. 2010/2512]	8 November 2010
Television licensing statutory instruments	
The Communications (Television Licensing) (Amendment) Regulations 2005 [S.I. 2005/606]	14 March 2005
The Communications (Television Licensing) (Amendment) Regulations 2006 [S.I. 2006/619]	21 March 2006
The Communications (Television Licensing) (Amendment) Regulations 2010 [S.I. 2010/640]	23 March 2010

SCHEDULE 2

The Communications Act 2003 (Commencement No. 1) Order 2003 [S.I. 2003/1900]

The Office of Communications Act 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003 [S.I. 2003/3142]

PROJET DE LOI

ENTITLED

The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012

THE STATES, in pursuance of their Resolution of the 26th January, 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.

Amendment of 2007 Law.

1. The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007^b is amended as follows.

2. In the arrangement of sections -

(a) the entry relating to section 12 is repealed, and

(b) after the entry relating to section 55 insert the following entry -

"55A. Categorisation of proceedings under this

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

^b Order in Council No. XVII of 2008; amended by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (Amendment) Ordinance, 2008 (No. XXX of 2008); and the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010).

Law."

3. After section 1(6) insert the following subsection -

"(7) A warrant under this section -

- (a) may be granted ex parte and in chambers,
- (b) may be granted notwithstanding that notice of the application for it has not been given to any other person, and
- (c) may be granted subject to such terms and conditions as the Bailiff or appropriate judicial officer thinks fit."

4. In section 3(1) the words "found at any place in the Bailiwick" are repealed.

5. Section 3(2)(a) is repealed.

6. For section 7(4)(a)(ii) substitute the following subparagraph -

"(ii) proceedings in connection with the cash under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of cash or other property by a court in non-conviction based proceedings, or".

7. For section 7(5)(a)(ii) substitute the following subparagraph -

"(ii) proceedings in connection with the cash under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of cash or other property by a court in non-conviction based proceedings, or".

8. After section 7(5) insert the following subsection -

"(5A) An application for an order under subsection (2) may also be made by or with the authority of Her Majesty's Procurer where he has grounds for believing that an application may be made under section 49 for the registration of an overseas forfeiture order in respect of the cash to be further detained, and the Bailiff may make the order if satisfied that there are reasonable grounds for such belief.".

9. For section 10(5)(a)(ii) substitute the following subparagraph -

"(ii) proceedings in connection with the funds under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of funds or other property by a court in non-conviction based proceedings, or".

10. For section 10(6)(a)(ii) substitute the following subparagraph -

"(ii) proceedings in connection with the funds under

Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of funds or other property by a court in non-conviction based proceedings, or".

11. After section 10(6) insert the following subsection –

"(6A) An application for an order under subsection (1) or (3) may also be made by or with the authority of Her Majesty's Procureur where he has grounds for believing that an application may be made under section 49 for the registration of an overseas forfeiture order in respect of any funds or part of any funds in an account maintained at a bank, and the funds or the part of the funds are not less than the minimum amount, and the Bailiff may make the order if satisfied that there are reasonable grounds for such belief."

12. Section 12 is repealed.

13. In section 16 of the Law –

(a) in subsection (2) for "section 7, 10 or 13" substitute "section 7, 10, 13 or 49",

(b) at the beginning of subsection (4)(b)(i) insert the following –

"except where an application described in subparagraph (ii) or (iii) has been made,"

(c) at the end of subsection (4)(b)(ii) for the word "and" substitute "or", and

(d) after subsection (4)(b)(ii) insert the following subparagraph –

"(iii) if an application for the registration of an overseas forfeiture order has been made under section 49, decides not to register the order in the records of the Court, and".

14. In section 18 for the words following paragraph (c) substitute the following -

"with a view to proceedings in connection with the money being taken under Part III or V of this Law or proceedings being taken under legislation in force in a country designated under section 53 relating to the forfeiture of money or other property by a court in non-conviction based proceedings".

15. For section 47(1) substitute the following subsection -

"(1) If Her Majesty's Procureur receives from a country designated under section 53 a request in connection with a civil forfeiture investigation being conducted there with a view to proceedings in connection with money with which the investigation is concerned being taken under Part III or V of this Law or under legislation in force in that country relating to the forfeiture of money or other property by a court in non-conviction based proceedings, Her Majesty's Procureur may apply for an order under section 20, 28, 35 or 41."

16. For section 49(2) substitute the following subsections -

"(2) An overseas forfeiture order is an order of a court exercising jurisdiction in a country designated under section 53 for the forfeiture of monies found by that court to be the proceeds of unlawful conduct or intended for use in unlawful conduct, being an order made in non-conviction based proceedings under legislation in force in that country relating to the forfeiture of money by a court in non-conviction based proceedings.

(2A) Where an application for the registration of an overseas forfeiture order is made under this section, the money to which that order relates is to be detained or, as the case may be, frozen (and may not, subject to sections 16 and 54, be released under any power conferred by this Law) until any proceedings in pursuance of the application for registration are concluded."

17. For section 53(1) substitute the following subsection -

"(1) The Home Department may by regulations made after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark designate any country for the purposes of this Law if it appears to the Home Department to have legislation in force relating to the forfeiture by a court in non-conviction based proceedings of money or other property which is the proceeds of unlawful conduct or intended for use in unlawful conduct."

18. In section 55(1) for the words following paragraph (b) substitute the

following -

"are, except when and to the extent that the Royal Court orders otherwise under subsection (2), unaffected by -

- (i) an order freezing funds under section 10,
- (ii) proceedings for the forfeiture of money under Part III, or
- (iii) proceedings for the registration of an overseas forfeiture order under Part V."

19. After section 55 insert the following section -

"Categorisation of proceedings under this Law.

55A. For the avoidance of doubt, proceedings under this Law (other than proceedings for an offence) are for the purposes of the law of the Bailiwick (including, without limitation, the purposes of evidence and procedure) to be categorised as civil proceedings."

20. In section 56(1) -

- (a) in the definition of "Bailiff" after the words "Lieutenant Bailiff" insert ", Judge of the Royal Court",
- (b) in the definition of "bank" immediately before the word "means" insert ", in relation to the Bailiwick,",
- (c) after the definition of "country" insert the following

definition-

"**court**" includes any tribunal or person holding judicial office,"

- (d) for the definition of "legislation" substitute the following definition -

"**legislation**", in sections 7(4)(a)(ii), 7(5)(a)(ii), 10(5)(a)(ii), 10(6)(a)(ii), 18, 47(1), 49(2), 53(1) and 55(1), includes law of any description,"

- (e) for the definition of "money" substitute the following definition -

"**money**" means cash and funds,"

- (f) after the definition of "money laundering" insert the following definition -

"**non-conviction based proceedings**" : see subsection (1A),".

21. After section 56(1) insert the following subsection -

"(1A) Non-conviction based proceedings are those pursuant to which an order for the forfeiture of money or other property which is the proceeds of unlawful conduct or intended for use in unlawful conduct may be made by a court on grounds or in circumstances which are not dependent upon the conviction of any person of unlawful conduct.".

22. In paragraph 1 of the Schedule -

(a) after the words "Part III (forfeiture and release of money)" insert "or Part V (enforcement of orders made outside the Bailiwick)", and

(b) for subparagraph (a) substitute the following subparagraph -

"(a) which are detained or frozen under section 7 or 10, or which may not be released by virtue of section 13(3) or 49(2A), and".

23. In paragraph 2 of the Schedule after the words "an order made under section 7 or 10" insert "or (as the case may be) the prohibition on the release of the monies imposed by section 13(3) or 49(2A)".

Citation.

24. This Law may be cited as the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012.

Commencement.

25. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions and different purposes.

PROJET DE LOI

ENTITLED

The Mont Varouf School (Guernsey) Law, 2012

WHEREAS by a Conveyance registered on the Records of the Island of Guernsey on the 5th April 1738 an area of land or friquet called "la Croix Rompue" and upon which Saint Saviour's School had been constructed at Mont Varouf in the Parish of Saint Saviour (in this Law referred to as the "**first parcel of land**") was acquired by Daniel Le Prevost schoolmaster for himself and successor schoolmasters of Saint Saviour's School from Thomas Mancel and Thomas Alaire;

AND WHEREAS by a Conveyance registered on the Records on the 25th May 1861 the first parcel of land was ceded by the Reverend Pierre Carey Rector of the Parish of Saint Saviour and others authorised by the heirs of the founders ("les Donateurs") of Saint Saviour's School (they having claimed uninterrupted continuous peaceable possession of the first parcel of land in good faith for a period in excess of 20 years) to Phineas Blondel one of the Constables of the Parish of Saint Saviour and Nicholas Du Maresq and Messurier Lainé duly authorised by the ratepayers of the Parish (according to the minutes of a meeting of ratepayers held on the 20th November 1860) in trust for the Parish of Saint Saviour subject to it continuing to be used as a school and on condition that it was maintained in good repair and that certain obligations in relation to the school were followed;

AND WHEREAS by a Conveyance registered on the Records on the 28th October 1865 an area of land measuring one perch or thereabouts and adjoining the first parcel of land and forming part of the field known as "la Croix Rompue" (referred to in this Law as the "**second parcel of land**") was acquired by the

Reverend Pierre Carey Rector of the Parish of Saint Saviour and President of a Committee responsible for the enlargement of Saint Saviour's School and authorised by the ratepayers of the Parish (according to the minutes of a meeting of the ratepayers held on the 22nd February 1865) in trust for the Parish of Saint Saviour from Abraham Robin;

AND WHEREAS by a Conveyance registered on the Records on the 8th February 1902 an area of land measuring 12 perches or thereabouts and adjoining the first and second parcels of land (referred to in this Law as the "**third parcel of land**") was acquired by the Superviseur de la Chaussée et Trésorier des États de cette Ile (authorised by Act of the Royal Court dated the 9th November 1901) in trust for the benefit of the parish school of Saint Saviour from Abraham Jean Robin;

AND WHEREAS by a Conveyance registered on the Records on the 14th November 1907 an area of land forming part of a field called "la Croix Rompue" in the Parish of Saint Saviour and adjoining the first, second and third parcels of land (referred to in this Law as the "**fourth parcel of land**") was acquired from Thomas Robin as to an undivided one half share by the Superviseur de la Chaussée et Trésorier des États de cette Ile for the States and as to the remaining undivided one half share by the Constables of Saint Saviour for the Parish of Saint Saviour;

AND WHEREAS uncertainty exists as to the persons in whom the respective parcels of land are vested;

AND WHEREAS the first, second, third and fourth parcels of land (collectively in this Law referred to as "**Mont Varouf School**") have previously been used for the provision of education in the Parish of Saint Saviour but have now ceased to be used for that purpose;

AND WHEREAS the States and the Constables and the Douzaine of the Parish of Saint Saviour have agreed that there is no longer any need for Mont Varouf School to be used for educational purposes and that it is appropriate and convenient that Mont Varouf School be vested for an estate of inheritance in the Constables for the time being of Saint Saviour and the States in accordance with the provisions of this Law free and released from all trusts and obligations to use Mont Varouf School for any specified purpose (including use as a school or for educational purposes) and further free and released from all covenants and other obligations contained in the Conveyance registered on the Records on the 25th May 1861 including for the avoidance of doubt the covenants and obligations to maintain the first parcel of land in good repair and to follow and observe any regulations made in relation to the provision of education at Mont Varouf School:

NOW THEREFORE THE STATES, in pursuance of their Resolution of the 15th December, 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 Island of Guernsey.

Transfer and vesting of Mont Varouf School.

1. Mont Varouf School is transferred to and shall vest for an estate of inheritance in the Constables and the States as follows -

- (a) as to the first parcel of land and the second parcel of land, in the Constables upon trust for such parochial purposes as they shall think fit,
- (b) as to the third parcel of land, in the States, and

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

- (c) as to the fourth parcel of land -
 - (i) as to one undivided half share, in the Constables upon trust for such parochial purposes as they shall think fit, and
 - (ii) as to one undivided half share, in the States.

Power of Constables to sell.

2. (1) The Constables have power to sell the whole or any part of any property vested in them under section 1.

(2) In the event of a sale under subsection (1), the proceeds of sale shall be held upon trust for such parochial purposes as the Constables shall think fit.

Release from trusts, covenants and obligations.

3. Subject to the trusts described in sections 1(a) and (c)(i), upon vesting under section 1, the parcels of land comprising Mont Varouf School are so vested free and released from -

- (a) all trusts and obligations to use the same for any specified purpose (including for use as a school or educational purposes), and
- (b) in the case of the first parcel of land, all covenants and other obligations contained in the above recited conveyance registered on the Records on the 25th May 1861 including, for the avoidance of doubt, the covenants and obligations to maintain the first parcel

of land in good repair and to follow and observe any regulations made in relation to the provision of education at the School.

Continuation of certain rights, etc.

4. For the avoidance of doubt all rentes, encumbrances and servitudes, other than those expressly freed and released under section 3, subsisting and enforceable at the date of commencement of this Law in respect of the parcels of land comprising Mont Varouf School shall continue to exist and be enforceable.

Extinction and transfer of personal liabilities.

5. All rights, obligations and liabilities subsisting in respect of each parcel of land comprising Mont Varouf School on the date of commencement of this Law and enforceable by, or against, the person in whom, immediately before that date, the relevant parcel of land was vested shall, on that date, be extinguished in relation to that person and transferred to and enforceable by or, as the case may be, against the person in whom the relevant parcel of land is now vested under section 1.

Interpretation.

6. In this Law -

"**the Constables**" means the Constables for the time being of the Parish of Saint Saviour,

"**first parcel of land**", "**second parcel of land**", "**third parcel of land**" and "**fourth parcel of land**" shall have the meanings respectively assigned to them in the recitals to this Law and any reference to a "**parcel of land**" shall be construed accordingly,

"Mont Varouf School" means the land and buildings collectively comprised in the first, second, third and fourth parcels of land,

"parochial purposes" include the purposes of improvement, repair, maintenance, rebuilding or redevelopment of any parish land, monument or building,

"Records" means the Records of the Island of Guernsey, and

"the States" means the States of Guernsey.

Citation.

7. This Law may be cited as the Mont Varouf School (Guernsey) Law, 2012.

Commencement.

8. This Law shall come into force on the day appointed by Ordinance of the States.

The Burma/Myanmar (Restrictive Measures) (Guernsey) Ordinance, 2012

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, hereby order:-

Application and infringement of EU Regulation.

1. (1) Council Regulation (EU) No. 194/2008 of the 25th February, 2008^c renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 ("**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, any of the prohibitions in 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 66, 10.3.2008, p.1.

- (a) Articles 1(i), 17, 18, 19 and 20 shall not apply,
- (b) references to the competent authorities of, or in, the Member States shall be construed as references to the Policy Council,
- (c) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) references to the Member State concerned shall be construed as references to the Policy Council,
- (e) references to the Union shall be construed as including Guernsey,
- (f) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto, and
- (g) references to the law of a Member State shall be construed as including the law of Guernsey.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation, or a decision of the Policy Council not to exercise any of its powers under the EU Regulation, 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 any obligation to provide information to or co-operate with the Policy Council in the

exercise of any power to request or demand the provision of information, or the cooperation of any person, under any article of the EU Regulation is guilty of an offence.

Furnishing of false information etc.

6. A person who in purported compliance with any article 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 and Excise Law 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 customs or excise legislation.

(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 customs or excise legislation.

Interpretation.

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

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

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

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

"**customs or excise legislation**" means 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,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation,

"**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,

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

"**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, 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,

^e Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

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.

Repeals.

10. The Burma (Restrictive Measures) (Guernsey) Ordinance, 2006^f is repealed.

Citation.

11. This Ordinance may be cited as the Burma/Myanmar (Restrictive Measures) (Guernsey) Ordinance, 2012.

Commencement.

12. This Ordinance shall come into force on the 4th January, 2012.

^f Recueil d'Ordonnances Tome XXXI, p. 554.

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 item 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, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State 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.

The Eritrea (Restrictive Measures) (Guernsey) Ordinance, 2012

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, hereby order:-

Application and infringement of EU Regulation.

1. (1) Council Regulation (EU) No. 667/2010 of the 26th July, 2010^c concerning restrictive measures in respect of Eritrea ("**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, any of the prohibitions in 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) Articles 1(g), 3, 11, 14 and 15 shall not apply,

^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 195, 27.7.2010, p.16.

- (b) references to the competent authorities of or in the Member States shall be construed as references to the Policy Council,
- (c) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) references to the Member State concerned shall be construed as references to the Policy Council,
- (e) references to the Union shall be construed as including Guernsey,
- (f) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto, and
- (g) references to the law of a Member State shall be construed as including the law of Guernsey.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation, or a decision of the Policy Council not to exercise any of its powers under the EU Regulation, 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 any obligation to provide information to or co-operate with the Policy Council in the exercise of any power to request or demand the provision of information, or the cooperation of any person, under any article of the EU Regulation is guilty of an

offence.

Furnishing of false information etc.

6. A person who in purported compliance with any article 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 and Excise Law 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 customs or excise legislation.

(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 customs or excise legislation.

Interpretation.

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

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

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

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

"**customs or excise legislation**" means 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,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation,

"**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,

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

"**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, 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.

^e Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

(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 Eritrea (Restrictive Measures) (Guernsey) Ordinance, 2012.

Commencement.

11. This Ordinance shall come into force on the 4th January, 2012.

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 item 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, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State 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.

**The Republic of Guinea (Restrictive Measures)
(Guernsey) Ordinance, 2012**

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, hereby order:-

Application and infringement of EU Regulation.

1. (1) Council Regulation (EU) No. 1284/2009 of the 22nd December, 2009^c imposing certain specific restrictive measures in respect of the Republic of Guinea ("**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, any of the prohibitions in 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) Articles 1(h), 13, 16 and 17 shall not apply,

^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 346, 23.12.2009, p.26.

- (b) references to the competent authorities of or in the Member States shall be construed as references to the Policy Council,
- (c) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) references to the Member State concerned shall be construed as references to the Policy Council,
- (e) references to the Union shall be construed as including Guernsey,
- (f) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto, and
- (g) references to the law of a Member State shall be construed as including the law of Guernsey.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation, or a decision of the Policy Council not to exercise any of its powers under the EU Regulation, 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 any obligation to provide information to or co-operate with the Policy Council in the exercise of any power to request or demand the provision of information, or the cooperation of any person, under any article of the EU Regulation is guilty of an

offence.

Furnishing of false information etc.

6. A person who in purported compliance with any article 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 and Excise Law 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 customs or excise legislation.

(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 customs or excise legislation.

Interpretation.

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

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

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

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

"**customs or excise legislation**" means 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,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation,

"**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,

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

"**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, 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.

^e Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

(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 Republic of Guinea (Restrictive Measures) (Guernsey) Ordinance, 2012.

Commencement.

11. This Ordinance shall come into force on the 4th January, 2012.

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 item 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, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State 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.

The Somalia (Restrictive Measures) (Guernsey) Ordinance, 2012

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, hereby order:-

Application and infringement of EU Regulation.

1. (1) Council Regulation (EU) No.356/2010 of the 26th April, 2010^c imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia ("**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, any of the prohibitions in 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) Articles 1(h), 10, 15 and 16 shall not apply,

^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 105, 27.4.2010, p.1.

- (b) references to the competent authorities of or in the Member States shall be construed as references to the Policy Council,
- (c) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) references to the Member State concerned shall be construed as references to the Policy Council,
- (e) references to the Union shall be construed as including Guernsey,
- (f) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto, and
- (g) references to the law of a Member State shall be construed as including the law of Guernsey.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation, or a decision of the Policy Council not to exercise any of its powers under the EU Regulation, 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 any obligation to provide information to or co-operate with the Policy Council in the exercise of any power to request or demand the provision of information, or the

cooperation of any person, under any article of the EU Regulation is guilty of an offence.

Furnishing of false information etc.

6. A person who in purported compliance with any article 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 and Excise Law 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 customs or excise legislation.

(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 customs or excise legislation.

Interpretation.

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

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

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

shall be construed accordingly,

"customs or excise legislation" means 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,

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"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,

^e Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

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 Somalia (Restrictive Measures) (Guernsey) Ordinance, 2012.

Commencement.

11. This Ordinance shall come into force on the 4th January, 2012.

SCHEDULE

Section 4

INFORMATION

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(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 item 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, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State 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.