

BILLET D'ÉTAT No. XV, 2012

27th JUNE 2012

	<i>Page</i>
The Supplementary Benefit (Implementation) (Amendment) Ordinance, 2012	1
The Child Protection (Amendment) (Guernsey) Ordinance, 2012	3
The Vehicular Traffic (Control of Parking on Certain States Land) (Amendment) Ordinance, 2012	5
The Offences (Fixed Penalties) (Guernsey) Law, 2009 (Commencement) Ordinance, 2012	7
The Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011 (Commencement) Ordinance, 2012	8

Ordinance laid before the States

The Iran (Restrictive Measures) (Guernsey) Ordinance, 2012	9
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The Supplementary Benefit (Implementation) (Amendment) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 29th September, 2011^a, and in exercise of the powers conferred on them by sections 3(2) and 15 of the Supplementary Benefit (Guernsey) Law, 1971^b, and all other powers enabling them, hereby order:-

Amendment of 1971 Ordinance.

1. In section 26(1) of the Supplementary Benefit (Implementation) Ordinance, 1971^c immediately after the definition of "the Registrar", insert -

"relevant allowance" means a residence order allowance or adoption allowance paid under any scheme for payment of such allowance approved by the States of Guernsey Health and Social Services Department;".

2. In the First Schedule to the Supplementary Benefit (Implementation) Ordinance, 1971 -

^a Article XIII of Billet d'État No. XV of 2011.

^b Ordres en Conseil Vol. XXIII, p. 26; Vol. XXVI, p. 292; Vol. XXXI, p. 278 and Vol. XXXIX, p. 107; has effect in Alderney by Recueil d'Ordonnances Tome XVII, p. 168; Tome XXIV, p. 468 and Tome XXVI, pp. 177 and 317 and as varied by Tome XXX, p. 25 and Ordinance No. XXXIX of 2009.

^c Recueil d'Ordonnances Tome XVII, pp. 139 and 179; Tome XVIII, pp. 119 and 126; Tome XIX, pp. 23, 106, 216 and 280; Tome XX, pp. 81, 158, 359 and 392; Tome XXI, pp. 44, 72, 156, 283 and 452; Tome XXII, pp. 60, 185 and 537; Tome XXIII, pp. 48, 277, 314 and 453; Tome XXIV, pp. 88, 471 and 495; Tome XXV, pp. 49, 168 and 338; Tome XXVI, pp. 75, 194, 319, and 458; Tome XXVII, pp. 127 and 379; Tome XXVIII, pp. 168, 228, 255, 303, 341, 429 and 537; Tome XXIX, pp. 185, 299, 378 and 550; Tome XXX, pp. 30 and 520; Tome XXXI, p. 652; Tome XXXII, p. 640 and Tome XXXIII, pp. 233 and 644; Ordinance No. XLVI of 2010 and XLI of 2011.

- (a) in paragraph 2(2) after the words "shall be aggregated", insert ", except where that other person is a person in respect of whom a relevant allowance is payable",
- (b) for the full stop at the end of paragraph 11(f) substitute a semi-colon and immediately thereafter, insert -
- "(g) any relevant allowance."

Interpretation.

2. (1) Unless the context otherwise requires, references in this Ordinance to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

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

Extent.

3. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Citation.

4. This Ordinance may be cited as the Supplementary Benefit (Implementation) (Amendment) Ordinance, 2012.

Commencement.

5. This Ordinance shall come into force on the 1st July 2012.

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

The Child Protection (Amendment) (Guernsey) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 27th April, 2011^a, and in exercise of the powers conferred on them by section 34(4) of the Child Protection (Guernsey) Law, 1972^b, section 1 of the Alderney (Application of Legislation) Law, 1948^c, sections 120 and 123 of the Children (Guernsey and Alderney) Law, 2008^d and all other powers enabling them in that behalf, hereby order:-

Amendment of Law of 1972.

1. Section 15(1) of the Law of 1972 is amended as follows -

- (a) by inserting in paragraph (a), immediately after the word "children", the words "under the age of five years", and
- (b) by inserting in paragraph (b), immediately after the word "five", the word "years".

^a Article VIII of Billet d'État No. VI of 2011.

^b Ordres en Conseil Vol. XXIII, p. 238; Vol. XXXVII, p. 45; Vol. XLI, p. 151; Recueil d'Ordonnances Tome XXVIII, p. 295; Ordinance No. XLII of 2010.

^c Ordres en Conseil Vol. XIII, p. 448; Vol. XVI, pp. 124 and 126; Vol. XXIV, p. 210; Vol. XXIX, p. 299; Vol. XXXVII, p. 251 and Recueil d'Ordonnances Tome XXXII, p. 504.

^d Order in Council No. XIV of 2009 as amended by Ordinances No. XI and XLVIII of 2009.

Interpretation.

2. (1) In this Ordinance, "**the Law of 1972**" means the Child Protection (Guernsey) Law, 1972.

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

Amendments to Law of 1972 to have effect in Alderney.

3. The amendments made by this Ordinance to the Law of 1972, as that Law has effect in Alderney^e, are extended to Alderney.

Citation.

4. This Ordinance may be cited as the Child Protection (Amendment) (Guernsey) Ordinance, 2012.

Commencement.

5. This Ordinance shall come into force on the 27th June, 2012.

^e The Law of 1972 was extended to Alderney subject to modifications: see Recueil d'Ordonnances Tome XXVIII, p. 295

The Vehicular Traffic (Control of Parking on Certain States Land) (Amendment) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 26th October, 2011^a, hereby order:-

Amendments to 1988 Ordinance.

1. The Vehicular Traffic (Control of Parking on Certain States Land) Ordinance, 1988, as amended^b, is further amended -

(a) by inserting at the end of section 2(1)(c) the following words -

"except temporarily for the purpose of loading or unloading on such part of the controlled land designated for that purpose by means of a traffic sign erected, placed or marked by or on behalf of the Committee on or near the relevant part of the controlled land, and in accordance with any conditions, restrictions or prohibitions so ordered or directed", and

(b) by adding the following paragraph at the end of the Schedule thereto -

^a Article IX of Billet d'État No. XVII of 2011.

^b Recueil d'Ordonnances Tome XXIV, p. 488; Tome XXVI, p. 146; Tome XXVIII, p. 323; Ordres en Conseil Vol. XLII (1), p. 272.

"13. Salerie Battery, St Peter Port, on the land to the west of the Salerie (land reclaimed under the North Beach Reclamation) and also the cobbled area at the northern end of the Battery. ".

Citation.

2. This Ordinance may be cited as the Vehicular Traffic (Control of Parking on Certain States Land) (Amendment) Ordinance, 2012.

Commencement.

3. This Ordinance shall come into force on the 27th June, 2012.

The Offences (Fixed Penalties) (Guernsey) Law, 2009 (Commencement) Ordinance, 2012

THE STATES, in exercise of the powers conferred on them by section 11 of the Offences (Fixed Penalties) (Guernsey) Law, 2009^a, hereby order:-

Commencement of Law.

1. The Offences (Fixed Penalties) (Guernsey) Law, 2009 shall come into force on the 1st July, 2012.

Citation.

2. This Ordinance may be cited as the Offences (Fixed Penalties) (Guernsey) Law, 2009 (Commencement) Ordinance, 2012.

^a Order in Council No. XV of 2010.

**The Criminal Justice (Minimum Terms for Sentences of
Life Imprisonment) (Bailiwick of Guernsey) Law, 2011
(Commencement) Ordinance, 2012**

THE STATES, in exercise of the powers conferred on them by section 23(2) of the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011^a, hereby order:-

Commencement of Law of 2011.

1. The Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011 shall come into force on the 27th June, 2012.

Citation.

2. This Ordinance may be cited as the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011 (Commencement) Ordinance, 2012.

^a Order in Council No. III of 2012.

The Iran (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 and all other powers enabling the States in that behalf, hereby orders:-

Application of EU Regulation.

1. Council Regulation (EU) No. 267/2012 of the 23rd March, 2012^c, concerning restrictive measures against Iran and repealing Regulation (EU) No. 961/2010, ("**the EU Regulation**") is applicable in Guernsey in all respects as if Guernsey, subject to the modifications in section 9, were a Member State.

Infringement of prohibitions and requirements in EU Regulation.

2. A person who infringes, or causes or permits any infringement of, any prohibition in, or requirement of, the EU Regulation is guilty of an offence.

Undertaking transactions and other activities without authorisation.

3. A person who undertakes any transaction or other activity for which authorisation is required under the EU Regulation without the authorisation of the Policy Council is guilty of an offence.

^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 88, 24.3.2012, p.1.

Licences.

4. (1) Authorisation for the transactions or other activities referred to in section 3, as provided for in the EU Regulation, shall in Guernsey be by way of a licence in writing granted by the Policy Council.

(2) If, for the purpose of obtaining a licence, any person -

(a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or

(b) recklessly makes any statement or furnishes a document or information which is false in a material particular,

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

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

(a) the licence had previously been modified by the Policy Council without that person's knowledge, and

(b) the alleged failure to comply would not have been a failure had the licence not been so modified.

Furnishing of false information etc.

5. A person who in purported compliance with any obligation to provide information under 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.

6. (1) A person guilty of an offence under section 2, 3, 4 or 5 or paragraph 2(b) or (c) of the Schedule is liable -

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

(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction, to imprisonment for a term not exceeding three months or 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, that person 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 the member were a director of the body corporate.

Certain provisions of Customs and Excise Law applicable.

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

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, penalties and proceedings for offences under this Ordinance as they apply to offences, penalties and proceedings for offences under customs or excise legislation.

Information.

8. 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.

Modification of Regulation.

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

(a) Article 48.1 shall not apply,

^d Ordres en Conseil Vol. XXIII, p. 573; as amended by Ordres en Conseil Vol. XXXIII, p. 217 and Recueil d'Ordonnances Tome XXIX, p. 406; there are other amendments not material to this Ordinance.

- (b) in Article 1(i), the definition of "financial institution" includes a person who is a licensee for the purposes of the Insurance Business (Bailiwick of Guernsey) Law, 2002^e or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002^f,
- (c) in Article 35.2, immediately after "based in the Union" insert "or in the Bailiwick of Guernsey, Bailiwick of Jersey or Isle of Man",
- (d) in Article 36.1, immediately after "(EEC) No 2454/93(2)", insert "and under or in accordance with the provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 or any other enactment for the time being in force relating to customs or excise matters in Guernsey",
- (e) references to competent authority or competent authority of a Member State shall be construed as references to the Policy Council except in Article 32.1(d),
- (f) 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

^e Ordres en Conseil Vol. XLII (2), p. 766; there are amendments not material to this Ordinance.

^f Ordres en Conseil Vol. XLII (2), p. 1022; there are amendments not material to this Ordinance.

one of Her Majesty's Principal Secretaries of State,

- (g) references to the Member State concerned shall be construed as references to the Policy Council except in Articles 24(d) and 32.1(d) where it shall be construed as referring to Guernsey,
- (h) references to the Union shall be construed as including Guernsey,
- (i) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto,
- (j) references to ports of Member States shall be construed as including any port in Guernsey,
- (k) references to competent customs authorities shall be construed as including the Chief Officer of Customs and Excise,
- (l) references to a national of a Member State shall be construed as including a person in Guernsey or from Guernsey, and
- (m) references to the law of a Member State shall be construed as including the law of Guernsey.

Designation of Financial Intelligence Service.

- 10. The Financial Intelligence Service is designated for the purpose of

reporting suspicions under Article 32.1(d) of the EU Regulation.

Appeals against decisions of the Policy Council.

11. (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.

Interpretation.

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

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

"Bailiff" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délegué and a Judge of the Royal Court,

"Chief Officer of Customs and Excise" has the meaning given by section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972,

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

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

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

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

legislation,

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

"Financial Intelligence Service" means the division of the Financial Investigation Unit, comprising those police officers and other persons assigned to the division for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures under Part I of the Disclosure (Bailiwick of Guernsey) Law, 2007^g, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports,

"Financial Investigation Unit" means that branch of the Customs and Excise and Immigration and Nationality Service responsible for the investigation of financial and economic crime,

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

"Judge of the Royal Court" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008^h,

"Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Law, may be validly constituted by the Bailiff sitting alone,

^g Order in Council No. XVI of 2007; Recueil d'Ordonnances Tome XXXIII, pp. 161 and 472; Ordinance Nos. XIV, XIX and XXXVII of 2010.

^h Order in Council No. XXII of 2008.

"police officer" means -

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

includes a customs officer,

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

"Schedule" means the schedule to this Ordinance,

"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" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989ⁱ, as amended,

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

(2) Any reference in this Ordinance to an enactment is a

ⁱ 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.

reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) References in this Ordinance to the EU Regulation are references to the EU Regulation as may be further amended from time to time.

Repeal.

13. The Iran (Restrictive Measures) (Guernsey) Ordinance, 2010^j and the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012^k are repealed.

Saving.

14. (1) Any licence which was granted by the Policy Council under section 4 of the Iran (Restrictive Measures) (Guernsey) Ordinance, 2010 and was in effect immediately before the coming into force of this Ordinance has effect as if it were a licence granted by the Policy Council under section 4 of this Ordinance.

(2) Any authorisation in writing issued by the Policy Council relating to a transaction or other activity for which authorisation is required under the EU Regulation, where the transaction in question has not yet taken place immediately before the coming into force of this Ordinance, has effect as if it were a licence granted by the Policy Council under section 4 of this Ordinance.

Citation.

15. This Ordinance may be cited as the Iran (Restrictive Measures) (Guernsey) Ordinance, 2012.

^j Ordinance No. II of 2011 as amended by the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012.

^k Made by the Legislation Select Committee on 27th January 2012.

Commencement.

- 16.** This Ordinance shall come into force on the 4th April, 2012.

SCHEDULE

Sections 6 and 8

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) any information or document in his possession or control which 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 has been specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

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

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

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

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

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