

BILLET D'ÉTAT No. XV, 2013

30th JULY 2013

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The Supplementary Benefit (Classes of persons to whom the Law applies) (Amendment) Ordinance, 2013

THE STATES, in pursuance of their Resolution of the 7th March 2012^a, and in exercise of the powers conferred on them by sections 2(3) and 15 of the Supplementary Benefit (Guernsey) Law, 1971, as amended^b, section 1 of the Alderney (Application of Legislation) Law, 1948^c and all other powers enabling them in that behalf, hereby order:-

Amendment to 2009 Ordinance.

1. In section 1(2) of the Supplementary Benefit (Classes of persons to whom the Law applies) Ordinance, 2009^d, in paragraph (b) of the definition of "child", for "12" substitute "7".

Interpretation.

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

(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.

^a Article VI of Billet d'État No. V of 2012

^b Ordres en Conseil Vol. XXIII, p. 26; amended by 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; Recueil d'Ordonnances Tome XXIV, p. 468 and Tome XXVI, pp. 177 and 317.

^c Ordres en Conseil Vol. XIII, p. 448; Vol. XVI, pp. 124 and 126; Vol. XXIV, p. 120; Vol. XXIX, p. 299; Vol. XXX, p. 224 and Vol. XXXVII, p. 251.

^d Recueil d'Ordonnances Tome XXXIII, p. 649.

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

Extent.

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

Citation.

4. This Ordinance may be cited as the Supplementary Benefit (Classes of persons to whom the Law applies) (Amendment) Ordinance, 2013.

Commencement.

5. This Ordinance shall come into force on 30th July 2013.

The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 (Commencement) (Guernsey and Alderney) Ordinance, 2013

THE STATES, in exercise of the powers conferred on them by section 6(1)(a) of the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012^a and all other powers enabling them in that behalf, hereby order:-

Commencement of Law.

1. The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 shall come into force on the 1st August, 2013.

Extent.

2. This Ordinance has effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Citation.

3. This Ordinance may be cited as the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 (Commencement) (Guernsey and Alderney) Ordinance, 2013.

^a Order in Council No. V of 2013.

**The Foreign Tax (Retention Arrangements)
(Guernsey and Alderney) (Amendment) Ordinance, 2013**

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 to 5 of the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004^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:-

Approved international agreement with Croatia.

1. The agreement on the taxation of savings income made between Guernsey and Croatia in 2013 -

- (a) is approved for the purposes of the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004, and
- (b) is an approved international agreement for the purposes of the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005, as amended.

Amendment of 2004 Law.

2. In the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004 -

- (a) in section 1(1) after "In this Law "**retention tax**" means"

^a Order in Council No. VIII of 2005.

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

insert ", subject to subsection (1A)",

- (b) after section 1(1) insert the following subsection -

"(1A) "Retention tax" includes, in the expression "in relation to retention tax" and related expressions, other matters dealt with by Council Directive 2003/48/EC of 3 June 2003 on the taxation of savings income in the form of interest payments^c (including, without limitation, the provisions thereof relating to information reporting and the exchange of information).",

- (c) in section 1(3)(b) the words "whether as an alternative to the retaining by deduction of retention tax or otherwise" are repealed, and

- (d) in section 4(1) for the definition of "retention tax" substitute -

"**"retention tax"** and **"in relation to retention tax"** (and related expressions) shall be construed in accordance with section 1,".

Amendment of 2005 Ordinance.

3. In the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005, as amended^d -

^c OJ L 157, 26.6.2003, p. 38.

^d Recueil d'Ordonnances Tome XXX, p. 31; Tome XXXI, p. 675; Tome XXXIII, p. 472; and Ordinance No. III of 2011.

- (a) in section 2(1) the expression ", entered into for the purpose of applying the retention tax in the transitional period," is repealed,
- (b) in the heading to section 6 for "retention tax" substitute "taxation of savings income",
- (c) sections 12(1)(b)(ii) and 12(2)(b)(ii) are repealed, and
- (d) in the table in Schedule 1 ("countries with which approved international agreements are made") add the following entry at the appropriate place -

Croatia	2013
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Amendment of 2006 Ordinance.

4. In section 1(2) of the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2006^e the expression ", entered into for the purpose of applying the retention tax in the transitional period," is repealed.

Citation.

5. This Ordinance may be cited as the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2013.

Commencement of Ordinance.

6. This Ordinance shall come into force on -

^e Recueil d'Ordonnances Tome XXXI, p. 675.

- (a) the 1st July, 2013, or
- (b) the date on which the agreement on the taxation of savings income between Guernsey and Croatia is made,

whichever is the later.

The Myanmar/Burma (Restrictive Measures) (Guernsey) Ordinance, 2013

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. 401/2013 of the 2nd May, 2013^c concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No 194/2008 ("**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. Except where the context requires otherwise, the EU Regulation in its application to Guernsey is modified as follows -

(a) Articles 1(5), 8 and 9 shall not apply,

(b) references to the competent authorities of, or in, the

^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 121, 3.5.2013, p.1.

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) subject to paragraph (e), references to the Member State concerned shall be construed as references to the Policy Council,
- (e) references to the Member State concerned shall be construed as including Guernsey where such references concern the enforcement of decisions or public policy,
- (f) references to the Union shall be construed as including Guernsey,
- (g) references to the customs territory of the Union shall be construed as including Guernsey, and references to any measure of the European Union relating to customs and excise, including for the avoidance of doubt entry and departure of goods to and from Guernsey, shall be construed where necessary as including customs or excise legislation within the meaning of this Ordinance,
- (h) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto,

- (i) references to the ports of Member States shall be construed as including any port in Guernsey,
- (j) references to competent customs authorities of Member States shall be construed as including the Chief Officer of Customs and Excise,
- (k) references to nationals of Member States, or from the territories of Member States, shall be construed as including any person in Guernsey or from Guernsey, and
- (l) 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 in its application to Guernsey, 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 Ordinary 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 Ordinary 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,

"**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délégué 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,

^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,

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

"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,

"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,

^e Order in Council No. XXII of 2008.

1989^f,

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/Myanmar (Restrictive Measures) (Guernsey) Ordinance, 2012^g, is repealed.

Citation.

11. This Ordinance may be cited as the Myanmar/Burma (Restrictive Measures) (Guernsey) Ordinance, 2013.

Commencement.

12. This Ordinance shall come into force on the 20th May, 2013.

^f 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.

^g Ordinance No. VII of 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.

