



# BILLET D'ÉTAT

WEDNESDAY, 26th NOVEMBER, 2014

XXVII  
2014

## LEGISLATIVE BUSINESS

1. The Disclosure (Bailiwick of Guernsey) (Amendment) (No.2) Ordinance, 2014, p. 2924
2. The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2014, p. 2924

## ALL OTHER PARLIAMENTARY BUSINESS

3. Home Department – Amendments to Criminal Justice Legislation in Respect of Money Laundering and Terrorist Financing<sup>a</sup>, p. 2925

<sup>a</sup> Accompanying items 1 and 2, being Ordinances entitled “The Disclosure (Bailiwick of Guernsey) (Amendment) (No.2) Ordinance, 2014” and “The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2014”

# BILLET D'ÉTAT

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## TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

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I hereby give notice that pursuant to Rule 1(4) of the Rules of Procedure of the States of Deliberation that the Items contained in this Billet d'État which have been submitted for debate will be considered at the Meeting of the States of Deliberation already convened for **WEDNESDAY, the 26th NOVEMBER, 2014.**

R. J. COLLAS  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey

5<sup>th</sup> November 2014

**THE DISCLOSURE (BAILIWICK OF GUERNSEY) (AMENDMENT) (NO.2)  
ORDINANCE, 2014**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Ordinance entitled “The Disclosure (Bailiwick Of Guernsey) (Amendment) (No.2) Ordinance, 2014”, and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Disclosure (Bailiwick of Guernsey) Law, 2007 ("the 2007 Law") in order to clarify an aspect of the existing obligations on certain persons and officers in financial services businesses, and certain persons in non-financial services businesses, to make a required disclosure. This is a disclosure that a person knows, suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering or that certain property is, or is derived from, the proceeds of criminal conduct. The obligation only arises if the relevant knowledge, suspicion etc. came to that person in the course of a business (either financial services or non-financial services).

As the 2007 Law is currently worded, there is no positive obligation to make a required disclosure within a particular time, although it is an offence to fail to make a required disclosure as soon as practicable. Clauses 1 to 3 of the Ordinance amend sections 1 to 3 respectively of the 2007 Law by introducing a positive obligation to make a required disclosure as soon as possible, and by substituting “possible” for practicable for the purposes of the offence of failing to make a required disclosure. The amendments are intended to enhance Bailiwick compliance with anti-money laundering and counter terrorist financing standards as issued by the Financial Action Task Force ("FATF").

**THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY) (AMENDMENT)  
(NO.2) ORDINANCE, 2014**

II.- Whether they are of the opinion to approve the draft Ordinance entitled “The Terrorism and Crime (Bailiwick Of Guernsey) (Amendment) (No.2) Ordinance, 2014”, and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("the 2002 Law"). Sections 14, 15 and 15A of the 2002 Law contain obligations to make a required disclosure in respect of terrorist financing and terrorist property that correspond to the obligations at sections 1 to 3 of the Disclosure (Bailiwick of Guernsey) Law, 2007 in relation to money laundering and the proceeds of criminal conduct. Clauses 1 to 3 of the Ordinance amend sections 12, 15 and 15A respectively of the 2002 Law in a way that is consistent with the amendments made to the Disclosure (Bailiwick of Guernsey) Law, 2007 described above. The amendments are intended to enhance Bailiwick compliance with anti-money laundering and counter terrorist financing standards as issued by the Financial Action Task Force ("FATF").

## HOME DEPARTMENT

### AMENDMENTS TO CRIMINAL JUSTICE LEGISLATION IN RESPECT OF MONEY LAUNDERING AND TERRORIST FINANCING

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

27<sup>th</sup> October 2014

Dear Sir

#### **1. Executive Summary**

The purpose of this report is to recommend an amendment to the Disclosure (Bailiwick of Guernsey) Law, 2007 and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, in order to clarify that a disclosure required under this legislation should be made as soon as possible.

#### **2. Money Laundering and Terrorist Financing Legislation**

Her Majesty's Procureur has advised in the following terms:

*"The Bailiwick's compliance with international standards on anti-money laundering/countering the financing of terrorism ("AML/CFT") has recently been assessed by Moneyval. As a result of that process I have re-examined the legal framework for dealing with AML/CFT and have identified one respect in which it could be clarified. This is in connection with the obligation to report suspicion related to money laundering or terrorist financing, under the Disclosure (Bailiwick of Guernsey) Law, 2007 ("Disclosure Law") and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("Terrorism Law") respectively.*

##### ***Obligation to report suspicion***

*The Disclosure Law contains obligations in specified circumstances to make a required disclosure, that is, a disclosure of knowledge, suspicion or reasonable grounds for suspicion that another person is engaged in money laundering, or that certain property is or is derived from the proceeds of criminal conduct. There are corresponding obligations in respect of terrorist financing in the Terrorism Law.*

*Under international standards, legislation should require that reports are made promptly. Under both the Disclosure Law and the Terrorism Law there is no reference to time within the positive obligation to make a required disclosure, although it is an offence not to make a required disclosure as soon as practicable. I am advised that in practice, businesses understand this to mean that they have a*

*positive obligation to make reports promptly, and do so. However, arguably the legislation as worded does not make this sufficiently clear. I therefore advise that the two Laws are amended to make it clear that a required disclosure must be made as soon as possible.*

*For the reason given above, this change would not materially affect the way in which the Bailiwick's regime is implemented in practice but would ensure that it is fully compliant technically with international standards. I therefore recommend that these changes be made forthwith."*

### 3. Resources

The Department does not consider there to be any resource implications associated with these proposals. HM Procureur has advised that he does not expect the introduction of this legislation to place any significant burden on the resources of Law Officers' Chambers or the Royal Court.

### 4. Legislation

In order to comply with HM Procureur's advice to effect the legislative changes "*forthwith*", the Department has sought the approval of the Policy Council and the Presiding Officer for this Report and the two ordinances entitled "**The Disclosure (Bailiwick of Guernsey) (Amendment) (No.2) Ordinance, 2014**" and "**The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) (No.2) Ordinance, 2014**" to appear in the same Billet d'État. The Department is grateful to the Policy Council and the Presiding Officer for their consent in this regard.

### 5. Principle of Good Governance

The proposals made in this States Report are in accordance with the Principles of Good Governance as outlined in Billet d'État IV 2011, particularly Principle 5 "developing the capacity and capability of the governing body to be effective."

### 6. Recommendations

For the reasons set out above, the Home Department recommends the States be asked to approve amendments to the Disclosure (Bailiwick of Guernsey) Law, 2007 and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 in order to require reports of suspicion to be made as soon as possible.

Yours faithfully

P L Gillson  
Minister

F W Quin  
Deputy Minister

M M Lowe

M K Le Clerc

A M Wilkie

Mr A L Ozanne  
(Non-States Member)

**(N.B. As there are no resource implications in this report, the Treasury and Resources Department has no comments to make.)**

**(N.B. The Policy Council supports the proposals in this report and confirms that the States Report complies with the Principles of Good Governance, as defined in Billet d'État IV of 2011.)**

The States are asked to decide:-

III.- Whether, after consideration of the Report dated 27<sup>th</sup> October, 2014, of the Home Department, they are of the opinion to approve amendments to “The Disclosure (Bailiwick of Guernsey) Law, 2007”, and “The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002”, in order to require reports of suspicion to be made as soon as possible.