

# **The South Sudan (Restrictive Measures) (Guernsey) Ordinance, 2015**

**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<sup>a</sup>, as amended and all other powers enabling the States in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>b</sup>, as amended, hereby orders:-

## **Application and infringement of EU Regulation.**

1. (1) Subject to the modifications in section 2, Council Regulation (EU) 2015/735 of the 7<sup>th</sup> May 2015<sup>c</sup> concerning restrictive measures in respect of the situation in South Sudan, and repealing Regulation (EU) No. 748/204 ("**the EU Regulation**") has full force and effect in Guernsey.

(2) A person who contravenes, or causes or permits any contravention of, any of the prohibitions in or requirements of the EU Regulation is guilty of an offence.

## **Modification of EU Regulation.**

2. The modifications referred to in section 1 are as follows -

(a) Articles 24 and 25 shall not apply,

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

<sup>c</sup> OJ L 117, 8.5.2015, p. 13.

- (b) a reference to the competent authority of a Member State shall be construed so as to include the Policy Council,
- (c) a reference to the obligation of a competent authority of a Member State, or Member State, to inform or notify shall be construed as an obligation on the part of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) a reference to the obligation of any natural or legal person, entity or body to transmit information to the Commission shall be construed as an obligation to transmit such information to the Policy Council,
- (e) a reference to a Member State shall be construed so as to include Guernsey,
- (f) a reference to the Union shall be construed so as to include Guernsey,
- (g) a reference to a vessel under the jurisdiction of a Member State shall be construed so as to include a Guernsey ship and a Guernsey fishing vessel,
- (h) a reference to an aircraft under the jurisdiction of a Member State shall be construed so as to include an aircraft registered on the Register of Aircraft established under the Aviation Registry (Guernsey)

Law, 2013<sup>d</sup>,

- (i) a reference to the territory of the Union and its airspace shall be construed so as to include Guernsey, its airspace and the territorial waters adjacent thereto, and
- (j) the inclusion of any natural or legal person, entity or body in any list provided for by the EU Regulation shall be subject to any annulment of the EU Regulation in its application to that person, entity or body by the Court of Justice of the European Union and having effect in the European Union for the time being.

**Appeals against decisions of Policy Council.**

3. (1) A person aggrieved by a decision of the Policy Council made 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

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<sup>d</sup> Order in Council No. XIII of 2013; Ordinance No. XI of 2014.

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

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

(a) within a period of 28 days immediately following the date of the decision of the Policy Council (or such other period as the Ordinary Court may in any particular case direct), and

(b) by summons served on the Chief Minister stating the grounds and material facts on which the appellant relies.

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

(a) dismiss the appeal or dismiss the Chief Minister's application (in either case on such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007<sup>e</sup>.

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<sup>e</sup> O.R.C. No. IV of 2007; amended by No. II of 2008.

(4) 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.

(5) 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.

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

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>f</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

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<sup>f</sup> Ordres en Conseil Vol. XVIII, p. 315.

**Powers to obtain information.**

4. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Policy Council, of information and documents 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 co-operation 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.

**Offences by legal persons and unincorporated bodies.**

8. (1) Where a legal person 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 -

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or
- (b) any person purporting to act in any such capacity,

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

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Ordinance 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),

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

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

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

**Certain provisions of Customs and Excise Law applicable.**

9. (1) Section 55 of the Customs and Excise (General Provisions)



(Bailiwick of Guernsey) Law, 1972<sup>g</sup> applies to the detention of a person for an offence under section 1 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

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

### **Interpretation.**

**10.** (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,

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

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

"**customs Laws**" and "**excise Laws**" mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law,

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<sup>g</sup> Ordres en Conseil Vol. XXIII, p. 573; No. XIII of 1991; and No. X of 2004.

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,

"**foundation official**" has the same meaning as it does under the Foundations (Guernsey) Law, 2012<sup>h</sup>,

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

"**Guernsey fishing vessel**" and "**Guernsey ship**" have the meanings given by section 294(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002<sup>i</sup>,

"**Judge of the Royal Court**" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008<sup>j</sup>,

"**Ordinary Court**" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly

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<sup>h</sup> Order in Council No. I of 2013.

<sup>i</sup> Ordres en Conseil Vol. XLIV(2), p. 1; Order in Council No. XIII of 2010; Merchant Shipping (Bailiwick of Guernsey) (Amendment) Law, 2014; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 624; Ordinance No. LIV of 2012.

<sup>j</sup> Order in Council No. XXII of 2008.

constituted by the Bailiff sitting alone,

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

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, 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<sup>k</sup>,

and other terms used in this Ordinance and the EU Regulation shall have the same respective meanings 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.

**Repeal.**

11. The South Sudan (Restrictive Measures) (Guernsey) Ordinance, 2014<sup>l</sup> is repealed.

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<sup>k</sup> Ordres en Conseil Vol. XXXI, p. 278.

<sup>l</sup> Ordinance No. XXXIX of 2014.

**Citation.**

12. This Ordinance may be cited as the South Sudan (Restrictive Measures) (Guernsey) Ordinance, 2015.

**Commencement.**

13. This Ordinance shall come into force on the 18<sup>th</sup> May, 2015.

## 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 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 legal person, any other person who is a present or past officer of, or is employed by, the legal person, 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, tampers with, falsifies, secretes, removes or otherwise disposes of 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 or order 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 right 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.