

SCHEDULE

Article 3

Modifications to be made in the extension of Part 1 of the Terrorist Asset-Freezing etc. Act 2010 to Guernsey

1. In section 10 (confidential information)—
 - (a) in subsection (4)(a), after “the Treasury” insert “or the Policy Council”; and
 - (b) in subsection (7)—
 - (i) for “the High Court (in Scotland, the Court of Session)” substitute “the Royal Court”;
 - (ii) for “the Treasury” substitute “Her Majesty’s Procureur”; and
 - (iii) omit “(in Scotland, an interdict)”.
2. In section 16 (exceptions)—
 - (a) in subsection 3(a), for “an enactment relating to social security” substitute “a relevant enactment”;
 - (b) in subsection (4), for “Treasury” substitute “Policy Council”; and
 - (c) in subsection (5), after “designated person” insert “, and relevant enactment includes the Social Insurance (Guernsey) Law, 1978(1), the Health Service (Benefit) (Guernsey) Law, 1990(2), the Long-term Care Insurance (Guernsey) Law, 2002(3) and such other enactment as the States may by Ordinance prescribe”.
3. In section 17 (licences)—
 - (a) for “Treasury”, each time it appears, substitute “Policy Council”; and
 - (b) omit subsection (2).
4. In the subheading to Chapter 3 (information for Treasury), for “Treasury” substitute “Policy Council”.
5. In section 19 (reporting obligations of relevant institutions), for “Treasury”, each time it appears, substitute “Policy Council”.
6. In section 20 (powers to request information)—
 - (a) for “Treasury”, each time it appears, substitute “Policy Council”; and
 - (b) in subsection (5), for “United Kingdom” substitute “Bailiwick”.
7. In sections 21 (production of documents) and 22 (failure to comply with request for information), for “Treasury”, each time it appears, substitute “Policy Council”.
8. In section 23 (general power to disclose information)—
 - (a) in subsection (1), after “Treasury” insert “or the Policy Council” ;
 - (b) in subsection (1)(g)(i), after “the United Kingdom” insert “, the Bailiwick or the Isle of Man”; and
 - (c) in subsection (1)(g)(ii), for “any of the Channel Islands, the Isle of Man” substitute “Jersey”.
9. In section 24 (co-operation with UK or international investigations)—
 - (a) in the heading, after “UK” insert “, Bailiwick”;
 - (b) after “Treasury” insert “or the Policy Council”; and

(1) Ordres en Conseil Vol.XXXVI, p.292.
(2) Ordres en Conseil Vol. XXXII, p.192.
(3) Order in Council No.XXIII of 2002.

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- (c) after “United Kingdom” insert “, the Bailiwick”.
- 10.** In section 25 (application of provisions)—
- (a) in subsection (2)(a), for “Data Protection Act 1998(4)” substitute “Data Protection (Bailiwick of Guernsey) Law, 2001(5)”;
 - (b) in subsection (2)(b), for “Regulation of Investigatory Powers Act 2000(6)” substitute “Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003(7)”;
 - (c) in subsection (3), after “who has acted as” insert “advocate,”;
 - (d) in subsection (5), for “Treasury” substitute “Policy Council”; and
 - (e) in subsection (6), omit “(in Scotland, to confidentiality of communications)”.
- 11.** In section 26 (appeal to the court in relation to designations), in subsection (2) omit “or, in Scotland, the Court of Session”.
- 12.** In section 27 (review of other decisions by the court)—
- (a) in subsection (1)—
 - (i) for “Treasury” substitute “Policy Council”; and
 - (ii) omit the words “other than a decision to which section 26 applies (appeal to the court in relation to designations)”;
 - (b) in subsection (2), for “High Court or, in Scotland, the Court of Session,” substitute “Royal Court”; and
 - (c) for subsections (3) and (4) substitute—
 - “(3) The grounds for determining whether the decision should be set aside 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.
 - (4) 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.
 - (5) A decision of the Royal Court under this section shall be final as to any question of fact, but an appeal from such a decision shall lie to the Court of Appeal on any question of law within such period and in such manner as may be prescribed by Order of the Royal Court.”.
- 13.** In section 32 (penalties)—
- (a) for “the relevant maximum”, each time it appears, substitute “12 months”;
 - (b) for “the statutory maximum”, each time it appears, substitute “level 4 on the uniform scale”;
 - (c) in subsection (4)—

(4) 1998 c.29.

(5) Order in Council No. V of 2002.

(6) 2000 c.23.

(7) Order in Council No. XXX of 2003.

- (i) for “level 5” substitute “level 4”; and
 - (ii) for “standard” substitute “uniform”; and
 - (d) omit subsections (3) and (5).
- 14.** In section 33 (extra-territorial application of offences)—
- (a) for “United Kingdom”, each time it appears, substitute “Bailiwick”;
 - (b) in subsection (1)(a), after “UK national” insert “who is ordinarily resident in the Bailiwick”; and
 - (c) omit subsections (3) and (4).
- 15.** In section 34 (liability of officers of bodies corporate etc)—
- (a) in the heading, for “Liability of officers of” substitute “Offences by”;
 - (b) for subparagraphs (1) to (3), substitute—
 - “(1) Where an offence under this Law is committed by a body corporate or by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to or to have been facilitated by any neglect on the part of, any director, manager, member of any committee of management or other controlling authority, secretary or other similar officer or partner of the body, or any person purporting to act in any such capacity, he as well as the body 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.
 - (3) Proceedings for an offence alleged to have been committed under this Law by an unincorporated body shall be brought in the name of that body and not in the name of any of its members, and a fine imposed on the body on its conviction of such an offence shall be paid out of its funds.
 - (4) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.”.
- 16.** In section 35 (jurisdiction to try offences)—
- (a) in subsection (1), for “is committed outside the United Kingdom” substitute “is committed outside the Bailiwick”;
 - (b) in subsection (1)(a), for “at any place in the United Kingdom” substitute “in Guernsey”;
 - (c) in subsection (1)(b), for “at any such place” substitute “in Guernsey”; and
 - (d) omit subsections (2) to (4).
- 17.** In section 40 (meaning of “financial services”), at the end of (1)(b) insert—
- “,
- (c) any finance business within the meaning of section 24 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987⁽⁸⁾ and not included in subsection (1) (a) or (b).”.
- 18.** In section 41 (meaning of “relevant institution”), for subsections (1) and (2) substitute—
- “(1) In this Part “relevant institution” means—

⁽⁸⁾ Ordres en Conseil Vol. XXX, p.243.

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- (a) a person (whether or not an individual) that carries on financial services business in or from the Bailiwick, or
- (b) a person (not being an individual) who is incorporated or constituted under the law of the Bailiwick or any part thereof and carries on financial services business in any part of the world.

(2) For the purposes of subsection (1), “financial services business” has the same meaning as in the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999(9).”.

19. In section 42 (interpretation: general)—

- (a) before the definition of “designated person”, insert—

““advocate” means an advocate of the Royal Court of Guernsey;

“Bailiff” includes the Deputy Bailiff, a Lieutenant Bailiff and any Judge of the Royal Court of Guernsey;

“Bailiwick” means the Bailiwick of Guernsey;

“Court of Appeal” means the court established by the Court of Appeal (Guernsey) Law, 1961(10);

“customs officer” means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972(11);”;

- (b) in the definition of “enactment”—

- (i) at the end of subsection (1)(b)(ii) omit “or”; and

- (ii) at the end of subsection (1)(b)(iii) insert—

“; or

- (iv) any Law, Ordinance or subordinate legislation made by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark;”;

- (c) after the definition of “funds”, insert—

““Her Majesty’s Procureur” includes her Majesty’s Comptroller;”;

- (d) after the definition of “interim designation” insert—

““police officer” includes a customs officer;

“Policy Council” means the States of Guernsey Policy Council;”;

- (e) after the definition of “relevant institution” insert—

““Royal Court” means the Royal Court of Guernsey sitting as an Ordinary Court and for the purposes of this Act the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats;”;

- (f) after the definition of “the relevant Security Council Resolutions” insert—

““uniform scale” means uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989(12).”.

20. In section 45 (consequential amendments, repeals and revocations)—

- (1) in the heading, omit “amendments,” and “and revocations”; and

- (2) for section 45, substitute “The Terrorism (United Nations Measures) (Channel Islands) Order 2001 (S.I.2001/3363) in its application to the Bailiwick is repealed in its entirety.”.

(9) Ordres en Conseil Vol. XXXIX, p.137.

(10) Ordres en Conseil Vol. XXVIII, p.315.

(11) Ordres en Conseil Vol. XXIII, p.573.

(12) Ordres en Conseil Vol. XXI, p.278.

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