

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

**REVISIONS TO THE SUPERVISORY FRAMEWORK FOR
PRESCRIBED BUSINESSES**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Revisions to the Supervisory Framework for Prescribed Businesses”, dated 29th February 2024, they are of the opinion:-

1. To agree to empower the Guernsey Financial Services Commission to:-
 - (i) Require provision of information on the identity of directors, partners and beneficial owners of Prescribed Businesses providing legal, accountancy and real estate services as part of the application for registration, and on an ongoing basis when changes to those persons occur within a Prescribed Business (as set out in paragraph 3 of the Policy Letter);
 - (ii) Refuse an application to register as a Prescribed Business, or revoke a registration, should any director, partner or beneficial owner of an applicant Prescribed Business or registered Prescribed Business fail to satisfactorily complete any of the checks undertaken by the Registrar of Companies (in the Registrar's capacity as the Administrator of Estate Agents, the Administrator of Accountants and the Administrator of non-locally qualified legal professionals), or HM Greffier (as set out in paragraph 3 of the Policy Letter);
 - (iii) Impose administrative financial penalties upon Prescribed Businesses for the late payment of annual registration fees (as set out in paragraph 4 of the Policy Letter);
 - (iv) Make rules requiring certain information be submitted annually to the Commission and prescribing administrative penalties for late and inaccurate filings (as set out in paragraph 5 of the Policy Letter);
 - (v) Impose higher financial penalties for non-compliance (as set out in paragraph 6 of the Policy Letter);
2. To agree to amend Schedule 9 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 in order to make explicit that beneficial owners

of firms of Advocates are required to make notifications to HM Greffier (as set out in paragraph 7 of the Policy Letter);

3. To approve the draft Projet de Loi entitled “The Prescribed Businesses (Bailiwick of Guernsey) (Amendment) Law, 2024”, as set out in Appendix 1 to the Policy Letter, and to authorise the Bailiff to present a most humble petition to His Majesty praying for His Royal Sanction thereto; and
4. To approve the draft Ordinance entitled “The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024” as set out in Appendix 2 to the Policy Letter, and to direct that the same shall have effect as an Ordinance of the States.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

PRESCRIBED BUSINESSES (BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2024

This Projet amends section 13 of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 ("the 2008 Law"). The amendment increases the level of discretionary financial penalties the GFSC may impose on a registered prescribed business or any director, controller, partner, senior official or beneficial owner thereof for breaches of the 2008 Law or any of the “relevant enactments” within the meaning of the 2008 Law. The changes prescribe different maximum levels for businesses and individuals. The amendment also creates an associated regulation making power and adds to the list of factors the GFSC must take into consideration when considering whether or not to impose a penalty.

CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2024

This Ordinance amends Schedule 5, and Schedule 9, to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. The amendments to Schedule 5:

- change the information required to be submitted to the GFSC on an application to register as a prescribed business (inserted text in paragraph 2(3)(a)(v));

- empower the GFSC to refuse to register a business as a Prescribed Business (or revoke the registration of a registered business) if any director, partner or beneficial owner thereof fails to comply with the notification requirements under Schedules 6 – 9, or a disqualification order is made against any such person under Schedules 6 – 8, or a referral of such a person is made by HM Greffier under Schedule 9 (inserted paragraph 2(5B) and inserted text at the end of paragraph 5(1A));
- empower the GFSC to make regulations providing for the payment of penalties for late payment of fees and the late filing of information and documents under Schedule 5 (inserted paragraph 3A); and
- empower the GFSC to make rules requiring prescribed businesses to submit annual returns (inserted paragraph 3B).

The amendment to Schedule 9 provides for the beneficial owners of local legal services businesses within the meaning of Schedule 9 to be subject to the notification requirements under that Schedule.

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PRESCRIBED BUSINESSES**

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port
GY1 2NZ

29th February 2024

Dear Sir

1. Executive Summary

- 1.1 This Policy Letter proposes changes to the supervisory framework surrounding businesses and individuals registered under the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (the “PB Law”) and Schedule 5 (“Schedule 5”) to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “POC Law”). This includes individuals and businesses providing legal, accountancy, and estate agency services, and individuals who act as director to not more than six companies which are not exempt from registering with the Guernsey Financial Services Commission (the “Commission”) (“Prescribed Businesses”).
- 1.2 The proposed changes seek to enhance the effectiveness of the Bailiwick of Guernsey’s (the “Bailiwick”) supervisory framework for Prescribed Businesses by expanding the scope of the Commission’s supervisory powers and ensuring the sanctions available to it are sufficiently dissuasive. These changes also constitute part of the preparations for the Bailiwick’s next evaluation by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (“MONEYVAL”) scheduled later in 2024.
- 1.3 The Committee would like to thank the Presiding Officer for agreeing that the draft Projet de Loi and draft Ordinance may be laid in conjunction with the propositions and accompanying policy letter.

2. Background

- 2.1 The PB Law and the anti-money laundering and combatting of terrorist financing requirements (“AML/CFT”) in relation to customers¹, set out in Schedule 3 to the POC Law, were put in place because of the expectations of the Financial Action Task Force (“FATF”). The FATF sets global standards for AML/CFT. All jurisdictions are expected to comply with these standards and, with few exceptions, are subject to periodic evaluation of their level of compliance. The purpose of MONEYVAL’s visit this year is to assess and evaluate the Bailiwick’s compliance with FATF standards.
- 2.2 Since the PB Law and the AML/CFT requirements were enacted, the FATF’s standards in relation to Prescribed Businesses have been revised. The technical requirements for FATF Recommendation 28, embodied in the methodology used for evaluations, now state that an authority within each jurisdiction should take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a Prescribed Business; and, linked with these measures, for an authority to have adequate powers to perform its functions, including powers to monitor compliance and sanctions available in the event of non-compliance.

3. Registration of a Prescribed Business

- 3.1 The Registrar of Companies (in the Registrar’s capacity as the Administrator of Estate Agents, the Administrator of Accountants and the Administrator of non-locally qualified legal professionals) (the “Registrar”) and HM Greffier undertake anti-criminality checks on individuals directing, managing and owning Prescribed Businesses, in accordance with Schedules 6 to 9 of the POC Law, to ensure individuals within the roles mentioned are fit and proper persons. The Commission registers Prescribed Businesses and undertakes ongoing risk-based AML/CFT supervision in accordance with Schedules 3 and 5 of the POC Law. As such, there are powers for the Commission, the Registrar and HM Greffier to share information. While the Commission has the ability to obtain relevant information from the Registrar and HM Greffier, it is proposed to amend Schedule 5 so that the name, date of birth and place of residence of directors, partners and beneficial owners is provided directly to the Commission as part of the application for registration. The provision of information directly from Prescribed Businesses to the Commission is important to ensure the most rapid and effective process possible for the registration of Prescribed Businesses and for ongoing risk-based supervision by the Commission. It is also proposed that the Commission should receive any subsequent changes to this information,

¹ Originally implemented by the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2008

contemporaneously as the Registrar and HM Greffier, as such changes may have implications as to the risk profile of the relevant Prescribed Business.

- 3.2 The Commission maintains a list of all Prescribed Businesses which are registered with it (the “PB Register”) in accordance with Schedule 5 and (subject to the redaction of information relating to individuals within the Prescribed Business) the Commission is required to publish a copy of the PB Register on its website. The PB Register is for AML/CFT purposes; the requirement to register with the Commission is dependent on the type of business undertaken and whether any exemptions apply.
- 3.3 Schedule 5 requires that the Commission must register a Prescribed Business on receipt of a statement containing all the relevant information and the registration fee. It is proposed that Schedule 5 be amended to include an ability for the Commission to refuse or revoke registration of a Prescribed Business where the minimum standards checks undertaken by the Registrar and/or HM Greffier have not been satisfactorily completed or where any orders or referrals have been made under the applicable schedule of the POC Law.

4. Late Payment of Fees

- 4.1 Schedule 5 makes provision for the payment of an annual fee payable by Prescribed Businesses registered with the Commission on, or within 30 days following, 1 January in each calendar year following the year of registration. It is proposed that the Commission should have the power to apply an administrative financial penalty for the late payment of these fees. These are powers which the Commission currently has in respect of financial services businesses.

5. Annual Returns

- 5.1 Section 5 of the PB Law contains a power for the Commission to require production of information, documents and reports reasonably required by it for the performance of its functions, on serving written notice on a Prescribed Business. It is proposed that this power be extended to enable the Commission to make annual provision of data returns, that it considers necessary for the performance of its functions, mandatory without the need for the Commission to serve a notice. Moreover, it is proposed that the Commission should have the power to apply an administrative financial penalty for the late and inaccurate filing of returns. These are powers which the Commission currently has in respect of financial services businesses.

6. Financial Penalties Regime

- 6.1 FATF Recommendation 35 requires that countries ensure that there is a range of proportionate and dissuasive sanctions to deal with natural and legal persons

- that fail to comply with AML/CFT obligations. These sanctions should apply to Prescribed Businesses in the same way as they apply to financial institutions and apply to directors and senior management of Prescribed Businesses.
- 6.2 One of the findings from the MONEYVAL report following the October 2014 evaluation of the Bailiwick was that the maximum discretionary penalties for legal persons (firms) available to the Commission were not dissuasive and proportionate.
- 6.3 Following the publication of the MONEYVAL report, amendments were made to the discretionary financial penalties under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987² as follows:
- (a) the maximum level of fine available to the Commission for licensees and former licensees (other than personal fiduciary licensees) was increased from £200,000 to £4,000,000, with any fine over £300,000 limited to a maximum of 10% of the turnover of the licensee/former licensee in question; and
 - (b) the maximum level of fine available for relevant officers (that is, directors and other officers of licensees and former licensees) and personal fiduciary licensees was increased from £200,000 to £400,000, with an additional criterion required to be considered by the Commission, being the emoluments arising in respect of the relevant officer's (or personal fiduciary licensee's) position.
- 6.4 However, no similar change was made to the financial penalties available in relation to Prescribed Businesses and these remain capped at £200,000.
- 6.5 It is of note that, although the Bailiwick was the first Crown Dependency to introduce discretionary penalties in 2008, both Jersey and the Isle of Man have introduced discretionary financial penalty regimes which do not have set maximum monetary caps for businesses. This is considerably higher than the penalty framework in the Bailiwick which has a maximum cap of £4,000,000 for financial services businesses. Furthermore, the penalty frameworks in both Jersey and the Isle of Man apply equally to their financial services sectors (i.e banking, insurance and investment sectors) as well as to their Prescribed Business sectors.
- 6.6 In light of the statutory levels of penalty which are in place in similar jurisdictions, and the way in which international standards are developing, it is proposed that the levels of financial penalty available to the Commission for Prescribed Businesses and their directors, controllers, partners, senior officers and beneficial owners, and those persons acting as director of not more than six

² Now repealed and replaced with the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020

companies who are registered with the Commission, should be increased to be consistent with the financial penalties available for financial services businesses in the Bailiwick as follows:

- (a) the maximum level of fine for Prescribed Businesses and former Prescribed Businesses (other than those persons acting as director of not more than six companies, who are registered with the Commission) should be increased from the current level of £200,000 to £4,000,000, with any fine over £300,000 being limited to a maximum of 10% of the turnover of the Prescribed Business/former Prescribed Business in question;
- (b) the maximum level of fine available for a director, controller, partner, senior officer or beneficial owner of a registered Prescribed Business and those persons acting as director of not more than six companies, who are registered with the Commission should be increased from £200,000 to £400,000 with an additional criterion required to be considered by the Commission, being the emoluments arising in respect of the relevant officer's position.

7. Beneficial Owners of Firms of Advocates

- 7.1 All locally qualified practicing Advocates are under a continuing obligation to provide certain information, which enables scrutiny as to their fitness to be an Advocate under section 14 of the Guernsey Bar (Bailiwick of Guernsey) Law, 2007 and, if an Advocate is a Managing Advocate, the minimum standards notifications required under Schedule 9 of the POC Law.
- 7.2 Rule 4 of the Guernsey Bar Rules of Professional Conduct disallows Advocates from entering into professional partnership with any person other than an Advocate and Rules 4A and 4B provide that an Advocate may not practise as a member or employee of a limited liability partnership, which has a member who is not an Advocate, except where the member is the personal representative of a deceased member or appointed on behalf of a member subject to legal incapacity. As such, all beneficial owners of firms of Advocates will be Advocates and consequently will already be subject to notification requirements.
- 7.3 Notwithstanding that beneficial owners of firms of Advocates will already be subject to the reporting requirements set out in paragraph 7, the FATF standards would be better achieved by including an additional reporting requirement to explicitly deal with beneficial ownership. As such, it is proposed that Schedule 9 of the POC Law is amended to include a specific requirement for Advocates to include beneficial ownership details as part of their existing notifications to HM Greffier.

8. Consultation

- 8.1 Prescribed Businesses have been consulted on the proposals set out in this Policy Letter. Officers of the Policy & Resources Committee and the Commission liaised on the preparation of the consultation paper. Six responses in total were received, with at least one response from each of the legal, accountancy and estate agency sectors. An important theme was a request for the provision of guidance on the application of administrative and discretionary financial penalties (as referred to in paragraphs 4 and 6 above). Also, there was a request for the provision of information to more than one authority to be implemented in a way that minimises the administrative burden on businesses. The Commission has confirmed that there will be dialogue with Prescribed Businesses in relation to these matters.
- 8.2 As this Policy Letter proposes amendments to the legal framework in force across the Bailiwick, the Policy & Resources Committee has consulted the Policy & Finance Committees of Alderney and Sark. Neither Committee raised any objections to the proposals. The Policy & Resources Committee has also consulted the Committee *for* Economic Development, which has also not raised any objections to the proposals.

9. Compliance with Rule 4

- 9.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 9.2 In accordance with Rule 4(1)(a), the proposed changes directly contribute to the States' objectives and policy plans as set out in the Government Work Plan³ namely the obligation to meet required international standards and the Resolution to prepare the island for the MONEYVAL assessment.
- 9.3 In accordance with Rule 4(1)(b), the Committee consulted with Prescribed Businesses.
- 9.4 In accordance with Rule 4(1)(c), the Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- 9.5 In accordance with Rule 4(1)(d), there are no resources required to fulfil the Propositions of this Policy Letter.
- 9.6 In accordance with Rule 4(2)(a), the Propositions relate to the purpose and policy responsibilities of the Policy & Resources Committee under "other matters which

³ [Government Work Plan 2022, Billet d'État X Volume 1, 2022](#) and [Resolutions](#) of 1st July, 2022

have been delegated to the Committee”, including “the policy framework for the regulation of financial services”.

- 9.7 In accordance with Rule 4(2)(b), it is confirmed that the Propositions have the unanimous support of the Committee.

Yours faithfully

L S Trott, President
H J R Soulsby, Vice-President

J A B Gollop
J P Le Tocq
R C Murray

The Prescribed Businesses (Bailiwick of Guernsey)

(Amendment) Law, 2024

THE STATES, in pursuance of their Resolutions of the * April, 2024^a have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of the Prescribed Businesses Law.

1. (1) Section 13 of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008^b (power to issue discretionary financial penalties) is amended as follows.

(2) In subsection (1), for "£200,000" to the end, substitute " the relevant sum calculated in accordance with subsection (1A) (or such other sum as the States may specify by Ordinance) as it considers appropriate."

(3) After subsection (1), insert -

"(1A) The relevant sum is -

(a) in the case of a registered prescribed business or a former registered prescribed business (other than a prescribed business of the type described in paragraph 6 of Schedule 2 in respect of which paragraph (b) applies),

^a Article * of Billet d'État No. ** of 2024.

^b Order in Council No. XII of 2009; this enactment has been amended.

£4,000,000, provided that any penalty of more than £300,000 shall not exceed 10% of the turnover of the registered prescribed business or former registered prescribed business in question, or

- (b) in the case of a person who, when the contravention or non-fulfilment in question took place, was a director, controller, partner, senior officer or beneficial owner of a registered prescribed business or a prescribed business of the type described in paragraph 6 of Schedule 2, an amount not exceeding £400,000.

(1B) The Policy & Resources Committee may, after consultation with the Commission, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, by regulation make such provision as it thinks fit for the purpose of carrying this section into effect including, without limitation, provision in respect of -

- (a) the meaning of the expressions "turnover" and "emoluments" for the purposes of this section, including without limitation the determination and basis of calculation thereof, and
- (b) the banding of penalties under this section within the relevant sum calculated in accordance with subsection (1A) and the

criteria subject to which each band is to be applied, taking into consideration the factors set out in paragraphs (a) to (h) of subsection (2).".

(4) In subsection (2) -

(a) at the end of paragraph (e) delete "and",

(b) at the end of paragraph (f), for "." substitute ";", and

(c) after paragraph (f) insert -

"(g) in the case of a director, controller, partner, or senior officer, or a business of the type described in paragraph 6 of Schedule 2, the emoluments arising from the position concerned, and

(h) any other factor the Commission considers relevant.".

(5) After subsection (3), insert -

"(4) In this section, references to "**paragraph 6 of Schedule 2**" are references to paragraph 6 of Schedule 2 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.".

Extent.

2. This Law has effect throughout the Bailiwick of Guernsey.

Citation.

3. This Law may be cited as the Prescribed Businesses (Bailiwick of Guernsey) (Amendment) Law, 2024.

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024

THE STATES, in pursuance of their Resolution of the * April, 2024^a and in exercise of the powers conferred on them by sections 53A and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Proceeds of Crime Law: Schedule 5.

1. (1) Schedule 5 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("**the Proceeds of Crime Law**") is amended as follows.

(2) In paragraph 2 (registration of prescribed businesses) -

(a) in subparagraph (3)(a)(v) at the end insert "the names, dates of birth and places of residence of the directors or partners (as the case may be) and beneficial owners, and", and

(b) after subparagraph (5A) insert -

"(5B) The Commission may refuse to register a business under this Schedule in circumstances where in respect of a director, partner or

^a Article * of Billet d'État No. ** of 2024.

^b Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

beneficial owner of that business -

- (a) there has been a failure to comply with paragraph 4 or paragraph 5 of Schedule 6 (Administrator of estate agents), Schedule 7 (Administrator of accountants), or Schedule 8 (Administrator of non-locally qualified legal professionals),
- (b) there has been a failure to comply with paragraph 3 or paragraph 4 of Schedule 9 (Functions of His Majesty's Greffier regarding advocates),
- (c) an order has been made under paragraph 6 of Schedule 6, paragraph 6 of Schedule 7, or paragraph 6 of Schedule 8, or
- (d) a referral has been made under paragraph 5 of Schedule 9."

(3) After paragraph 3 (validity of registration, annual fee and general requirements), insert -

"Administrative financial penalties.

3A. (1) The Commission may by regulation make such provision as it thinks fit in respect of the charging of administrative financial penalties for -

- (a) the late payment of fees or charges required to

be paid, or

- (b) the late filing or delivery of information or documents required to be filed or delivered,

by or under the provisions of this Schedule.

(2) Regulations under this paragraph may -

- (a) prescribe the amount and basis of calculation of penalties payable in the circumstances described in subparagraph (1),
- (b) provide for the payment and collection of fees, charges and penalties and for their recovery by the Commission as a civil debt,
- (c) make provision in relation to appeals (including, without limitation, provision applying the provisions of section 106 of the Financial Services Business (Enforcement) (Bailiwick of Guernsey) Law, 2020, subject to such exceptions, adaptations and modifications as may be prescribed by the regulations), and
- (d) make provision under the powers conferred by this Schedule notwithstanding the provisions of any enactment for the time being in force.

Rules as to annual return.

3B. (1) The Commission may make rules requiring the submission by prescribed businesses to the Commission, in such form and manner, at such times or intervals and in respect of such periods as may be prescribed, of an annual return.

(2) The annual return shall contain such information and shall be accompanied by such documents as may be prescribed, being information and documents considered by the Commission to be necessary -

- (a) for the purposes of enabling the Commission to perform its functions,
- (b) for the purposes of responding to the obligations of the Bailiwick in relation to international co-operation and mutual assistance, including without limitation information and documents relating to financial crime, including money laundering and financing of terrorism,
- (c) in the interests of -
 - (i) the public, or
 - (ii) the reputation of the Bailiwick as a finance centre.

(3) Information and documents submitted pursuant to

rules under this paragraph shall be in such form as may be prescribed or, if no form is prescribed, as the Commission may reasonably require.

(4) In this paragraph "**prescribed**" means prescribed by the rules."

(4) In paragraph 5 (suspension or revocation of registration), in subparagraph (1A) at the end insert "or (5B)".

Amendment of the Proceeds of Crime Law: Schedule 9.

2. (1) Schedule 9 to the Proceeds of Crime Law is amended as follows.

(2) In paragraph 3 (initial notification requirement), after subparagraph (6) insert -

"(7) In this paragraph and paragraph 4 (ongoing notification requirement), reference to a "managing Advocate" includes a beneficial owner of a local legal services business."

(3) In paragraph 13 (interpretation), at the end of the definition of "managing Advocate" insert "(and see also paragraph 3(7))".

Extent.

2. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

3. This Ordinance may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2024.

Commencement.

4. This Ordinance shall come into force on the day on which it is made.