

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

AMENDMENTS TO LEGISLATION RELATING TO IMPLEMENTATION OF INTERNATIONAL
SANCTIONS MEASURES

The States are asked to decide:-

Whether, after consideration of the Policy Letter dated 2nd August, 2021 of the Policy & Resources Committee, they are of the opinion:-

1. To agree to remove from the Sanctions (Bailiwick of Guernsey) Law, 2018, the power to implement sanctions measures enacted by the European Union and other provisions relating to the implementation of such measures; the power to amend the definition of sanctions measures by Ordinance (as set out in section 3);
2. To agree to clarify the scope of the criminal offences in the Sanctions (Bailiwick of Guernsey) Law, 2018 for breaching sanctions measures or for providing false or misleading information (as set out in section 4); and
3. To direct the preparation of such legislation as may be necessary to give effect to the foregoing.

The above Propositions have been submitted to Her 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.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

AMENDMENTS TO LEGISLATION RELATING TO IMPLEMENTATION OF INTERNATIONAL
SANCTIONS MEASURES

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

2nd August, 2021

Dear Sir

1 Executive summary

- 1.1 The purpose of this Policy Letter is to recommend some amendments to the Sanctions (Bailiwick of Guernsey) Law, 2018 (the Sanctions Law).
- 1.2 Some amendments arise as a result of the United Kingdom (UK) leaving the European Union (EU) and bringing into force its own sanctions measures. These amendments concern the removal of provisions relating to the implementation within the Bailiwick of sanctions measures enacted by the EU.
- 1.3 Other amendments clarify the application of criminal offences under the Sanctions Law.

2 Background

- 2.1 The Sanctions Law enables the Policy & Resources Committee (the Committee) to give effect to sanctions measures throughout the Bailiwick by regulations. The Sanctions Law also provides that breach of prohibitions or requirements of sanctions measures that have been implemented in this way is a criminal offence.
- 2.2 Sanctions measures for these purposes are defined as EU sanctions imposed under certain treaties, United Nations (UN) sanctions imposed under the UN

Charter and UK sanctions imposed under the Sanctions and Anti-Money Laundering Act 2018 (SAML Act). This definition reflects the fact that when the Sanctions Law was introduced, the UK was still a member of the EU and therefore had an ongoing obligation to implement EU sanctions. This meant in turn that the Sanctions Law had to make provision for both the implementation of EU sanctions until the point when the UK left the EU, and any sanctions that the UK might make under the SAML Act thereafter.

- 2.3 UN sanctions are included in the definition of sanctions measures to ensure that the Bailiwick has a legal mechanism in place under which it can take direct action to meet its obligations under the UN Charter if required. However, it has not been necessary to invoke that mechanism to date. This is because UN sanctions have been given effect as part of the sanctions regimes enacted by both the EU and now by the UK (see below).
- 2.4 The Sanctions Law does however provide for the automatic but temporary implementation in the Bailiwick of new UN sanctions, whether new regimes or new listings under existing regimes, pending their adoption by the EU. This interim provision was needed because under the EU's internal processes, there is a delay between the enactment of a new UN measure and its adoption by the EU. The temporary implementation provisions in the Sanctions Law effectively replicate measures taken by the UK to remove any gaps in complying with UN obligations in that intervening period. This is on the basis that by the end of the temporary period, the EU would invariably have enacted its own sanctions measure to implement the new UN sanctions regime and those measures would in turn be implemented domestically.
- 2.5 The Sanctions Law has been relied on to give effect to a number of EU regimes. However, as a result of the UK leaving the EU with effect from 31st December, 2020, all measures giving domestic effect to EU sanctions have been repealed. This includes Ordinances made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994, regulations made under the Sanctions Law in the period before the UK left the EU and provisions of the Sanctions Law giving temporary effect to new UN listings related to existing EU sanctions. These measures have been replaced by regulations giving effect to UK sanctions that are broadly in line with the corresponding EU sanctions. These are now the only sanctions applicable in the Bailiwick, although as indicated above, they include UN sanctions within their scope.
- 2.6 There is no longer any need to provide for temporary implementation of new UN listings under existing regimes, as these are incorporated automatically within the relevant UK sanctions. With regard to new UN regimes, these can be implemented directly if required by the Committee using its regulation making power referred to above. However, this is unlikely to be necessary save in

exceptional circumstances, such as where the UN enacts a new regime and there is an urgent operational need to give effect to it in the Bailiwick before the UK has enacted the necessary regulations under the SAML Act.

3 EU sanctions

- 3.1 As indicated above, before the UK had left the EU the Bailiwick needed the power in the Sanctions Law to implement EU sanctions, so as to ensure that the Bailiwick's sanctions regime could mirror that applicable to the UK as an EU member state. This mirroring of the UK position was not only in line with the longstanding constitutional position on foreign policy issues, but at a practical level it meant that Bailiwick businesses with UK links would not have to apply a sanctions regime which differed from that applicable to their UK counterparts. In addition, implementing EU sanctions was an effective way of meeting the Bailiwick's obligations under the UN Charter. These reasons no longer apply now that compatibility with the UK's position and the implementation of UN sanctions measures has been achieved by giving effect to UK sanctions.
- 3.2 In expectation of this, at the time when the Sanctions Law was introduced it was envisaged that once the UK had left the EU the Bailiwick would no longer implement EU sanctions or retain the power to do so. It was recognised that in addition to being unnecessary, there were strong policy arguments against the Bailiwick seeking to implement EU sanctions in future.
- 3.3 This was on the basis that implementation of EU sanctions could be incompatible with the UK position. This would cause not only a deviation from UK foreign policy but also confusion and practical difficulties for Bailiwick businesses with close ties to the UK. That expectation has been confirmed by the autonomous sanctions that the UK has enacted, because although they are broadly in line with the EU sanctions that they replace, they are not identical to them. There are differences not only at a technical level (for example as to the scope of restrictive measures and licensing criteria) but also at a practical level, because not all parties listed by the EU have been listed by the UK. There may well be further divergences in future.
- 3.4 Similar considerations arise in respect of the power to amend the definition of sanctions measures by Ordinance in the Sanctions Law. Its purpose was to enable the swift removal of the reference to EU sanctions as appropriate once the UK had left the EU. This power will therefore no longer be required once the reference to EU sanctions has been removed. Leaving the power in place could cause difficulties from a constitutional perspective, at least theoretically, as it would open up the possibility of the Bailiwick making significant foreign policy changes by secondary legislation without reference to the UK. The undesirability of both this situation and the retention of the power to

implement EU sanctions after Brexit was underlined by the UK authorities in discussions before the Sanctions Law received royal assent.

- 3.5 Therefore, it is proposed that the power to implement EU sanctions (including to give temporary effect to new UN regimes pending their adoption by the EU) and to amend the definition of sanctions measures by Ordinance should be removed. This would have the dual benefits of giving certainty to financial services businesses and other sectors about the scope of the Bailiwick's sanctions regime, and allaying any concerns that might otherwise arise about the Bailiwick adopting a different foreign policy position from that in the UK in future.

4 Criminal Offences

- 4.1 Section 3 of the Sanctions Law provides that contravention of any of the prohibitions or requirements of sanctions measures implemented in the Bailiwick is a criminal offence. This does not explicitly cover the situation where a prohibition or requirement is contained in an underlying instrument such as a licence or a direction that has been issued under a sanctions measure. The Committee has been advised by the Law Officers that while a prohibition or requirement contained in an underlying instrument is implicitly covered by section 3, it would be beneficial to amend the Sanctions Law to put the issue beyond doubt.
- 4.2 The Law Officers have further advised that it would be beneficial to clarify that the offences at section 17 of the Sanctions Law, which relate to the provision of information, apply to information provided voluntarily in relation to a UK sanctions measure (for example in connection with an application for a licence) in the same way as to information provided in response to a specific request from the Committee.
- 4.3 It is therefore proposed that the scope of these offences is clarified as advised by the Law Officers.

5 Consultation

- 5.1 The Law Officers have been consulted and raise no legal objection to the proposals in this Policy Letter.

6 Alderney and Sark

- 6.1 The Committee has consulted with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark. The committees support the proposals in this Policy Letter.

7 Resources

7.1 The Committee does not consider there to be any resource implications associated with the implementation of these proposals.

8 Recommendations

8.1 The States are asked to decide whether they are of the opinion:

- To agree to remove from the Sanctions (Bailiwick of Guernsey) Law, 2018, the power to implement sanctions measures enacted by the European Union and any provisions relating to the implementation of such measures; the power to amend the definition of sanctions measures by Ordinance;
- To agree to clarify the scope of the criminal offences in the Sanctions (Bailiwick of Guernsey) Law, 2018 for breaching sanctions measures or for providing false or misleading information; and
- To direct the preparation of such legislation as may be necessary to give effect to the foregoing.

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 Propositions contribute to Priority 2 of the Government Work Plan by enabling the Bailiwick to manage the effects of Brexit and meet international obligations.

9.3 In accordance with Rule 4(1)(b), the consultation undertaken with relevant stakeholders in the preparation of the Propositions is detailed in sections 5 and 6 of this Policy Letter.

9.4 In accordance with Rule 4(1)(c), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

9.5 In accordance with Rule 4(1)(d), there should be no additional financial implications to the States of Guernsey of carrying the proposals into effect.

9.6 In accordance with Rule 4(2)(a), the Propositions relate to the Committee's responsibilities for the policy framework for the regulation of financial services.

9.7 In accordance with Rule 4(2)(b), it is confirmed that the Propositions accompanying this Policy Letter are supported unanimously by the Policy & Resources Committee.

Yours faithfully

P T R Ferbrache
President

H J R Soulsby MBE
Vice-President

J P Le Tocq
M A J Helyar
D J Mahoney