

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE SANCTIONS AND TERRORIST ASSET FREEZING (BAILIWICK OF GUERNSEY)
(AMENDMENT) ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Sanctions and Terrorist Asset Freezing (Bailiwick of Guernsey) (Amendment) Ordinance, 2023" and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Sanctions (Bailiwick of Guernsey) Law, 2018 ("the Sanctions Law") and the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011 ("the Terrorist Asset Freezing Law").

Section 1 amends the Sanctions Law in three respects. First, it makes provision for additional functions of the Policy & Resources Committee in respect of sanctions that have been implemented in the Bailiwick. The second is to introduce a power for the Policy & Resources Committee to amend the Sanctions Law by regulation in order to give effect to the FATF Recommendations. The third is to introduce a protection against civil liability for acts or omissions of persons acting in good faith for the purposes of complying with sanctions measures.

Section 2 makes corresponding amendments to the Terrorist Asset Freezing Law.

Sections 3, 4 and 5 deal respectively with extent, citation and commencement.

The Sanctions and Terrorist Asset Freezing (Bailiwick of Guernsey) (Amendment) Ordinance, 2023

THE STATES, in pursuance of their Resolution of the ** September, 2023^a, and in exercise of the powers conferred on them by section 26 of the Sanctions (Bailiwick of Guernsey) Law, 2018^b, section 37 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Sanctions Law.

1. (1) The Sanctions (Bailiwick of Guernsey) Law, 2018 is amended as follows.

(2) After section 2, insert -

"Additional functions of the Committee in relation to implemented sanctions measures.

2A. (1) Without prejudice to the powers and duties conferred on the Committee by the other provisions of this Law or under any other enactment, the Committee has the following functions in relation to sanctions measures that have been implemented in the Bailiwick -

- (a) making proposals for additions to a UN sanctions list or a UK sanctions list ("**designation proposals**"), in accordance with

^a Article VI of Billet d'État No. XIV of 2023.

^b Order in Council No. VII of 2019. This enactment has been amended.

section 2B,

- (b) dealing with requests for assistance with the removal of a person from a UN sanctions list or a UK sanctions list ("**de-listing requests**"), in accordance with section 2C, and
- (c) publishing procedures or other information in respect of -
 - (i) de-listing proposals and de-listing requests,
 - (ii) the availability of the United Nations Office of the Ombudsperson,
 - (iii) the process for persons on a UN sanctions list to petition a request for removal from that list to any Focal Point established in respect of the UN sanctions measure in question,
 - (iv) licences to obtain access to funds or other assets that have been frozen under a sanctions measure implemented in the Bailiwick, and
 - (v) the unfreezing of funds or other assets in false positive cases within the meaning of section 2D.

Designation proposals.

- 2B. (1) The Committee must -
- (a) take steps to identify possible subjects for designation proposals, including obtaining information as necessary, whether from persons within the Bailiwick or elsewhere,
 - (b) if satisfied that there are reasonable grounds for suspecting that a person meets the criteria for inclusion on a UN sanctions list -
 - (i) request His Majesty's government in the United Kingdom to use its best endeavours to secure that the person in question is added to that UN sanctions list,
 - (ii) provide His Majesty's government in the United Kingdom with the reason for the request and any relevant information that the Committee may lawfully disclose, and
 - (iii) take such other steps as it may be necessary for the Committee to take to ensure that the designation proposal is made in accordance with such procedures (including by the use of any standard forms) as may be

specified by the relevant United Nations Committee, and

- (c) if satisfied that there are reasonable grounds for suspecting that a person meets the criteria for inclusion on a UK sanctions list -
 - (i) inform His Majesty's government in the United Kingdom of that fact, and
 - (ii) provide His Majesty's government in the United Kingdom with the reason for the request and any relevant information that the Committee may lawfully disclose.

(2) For the avoidance of doubt, for the purposes of making a designation proposal under this Law (including obtaining any information necessary to consider or make the designation proposal) -

- (a) there is no requirement that the person subject to the designation proposal -
 - (i) is or has been the subject of criminal proceedings in the Bailiwick or elsewhere, or
 - (ii) should be given notice of the fact that the designation proposal is being considered, will be made or has been

made, as the case may be, and

- (b) it is immaterial whether or not the subject of the proposal has been designated under the Terrorist Asset Freezing Law.

De-listing requests.

2C. (1) If the Committee -

- (a) receives a de-listing request in relation to a UN sanctions list or UK sanctions list other than a request within subsection (4), and
- (b) decides to comply with the request,

the Committee must deal with the request in accordance with this section.

(2) In the case of a de-listing request that relates to a UN sanctions list, the Committee must -

- (a) request His Majesty's government in the United Kingdom to use its best endeavours to secure that the person in question is removed from that UN sanctions list, and
- (b) provide His Majesty's government in the United Kingdom with the reason for the request and any relevant information that the Committee may lawfully disclose.

(3) In the case of a de-listing request that relates to a UK sanctions list, the Committee must -

- (a) inform His Majesty's government in the United Kingdom of the request, and
- (b) provide His Majesty's government in the United Kingdom with the reason for the request and any relevant information that the Committee may lawfully disclose.

(4) A de-listing request is within this subsection if -

- (a) a request to remove the sanctioned person in question from the relevant UN sanctions list or UK sanctions list has previously been made by or on behalf of that sanctioned person under this Law or under the Sanctions and Anti-Money Laundering Act 2018, and
- (b) the grounds on which the de-listing request is made do not include any significant matter that has not previously been considered by His Majesty's government in the United Kingdom.

False positive cases.

2D. A case is a false positive case if -

- (a) it involves a person who is not a sanctioned person ("**the innocent party**"),

- (b) the innocent party has the same name as a sanctioned person or a name that is similar to the name of a sanctioned person, and
- (c) the rights of the innocent party in respect of any funds or other assets have been inadvertently affected by action taken by another person as a result of the matters in paragraph (b)."

(3) In section 25, in the appropriate places, insert -

""**de-listing requests**": see section 2A,"

""**designation proposals**": see section 2A,"

""**false positive cases**": see section 2D,"

""**UK sanctions list**" means the list for the time being in place of designated persons within the meaning of the Sanctions and Anti-Money Laundering Act 2018 for the purposes of any particular UK sanctions measure," and

""**UN sanctions list**" means the list for the time being in place of persons who are listed, designated or otherwise identified by the United Nations for the purposes of financial restrictions under any particular UN sanctions measure,".

(4) In section 26 -

(a) after subsection (2), insert the following -

"(2A) The Committee may also by regulation amend this Law where it appears to the Committee to be necessary or expedient to do so for the purpose of giving effect to standards published by the Financial Action Task Force from time to time relating to combating threats to the integrity of the international financial system.", and

(b) in subsection (3), for the words "and (2)", substitute ", (2) and (2A)".

(5) After section 30, insert -

"Exclusion of liability.

30A. (1) A person is not to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, in compliance or purported compliance with any prohibition or requirement imposed by or under -

(a) this Law, or

(b) any sanctions measure referred to in section 3,

unless (for the avoidance of doubt) the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000."

Amendment of the Terrorist Asset Freezing Law.

2. (1) The Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011 is amended as follows.

(2) After section 8, insert the following -

"Additional functions of the Committee.

8A. (1) Without prejudice to the powers and duties conferred on the Policy & Resources Committee by the other provisions of this Law or under any other enactment, the Policy & Resources Committee has the following functions under this Law –

- (a) taking steps to identify possible subjects for designation, including obtaining information as necessary, whether from persons within the Bailiwick or elsewhere,
- (b) receiving, and making determinations in respect of, requests from other jurisdictions to make, renew, vary or revoke a designation under section 2, 4, 5 or 7 as the case may be,
- (c) making requests to other jurisdictions to freeze the assets of a designated person ("**freezing requests**") in accordance with section 8B, and
- (d) publishing procedures or other information in respect of -
 - (i) the matters set out at paragraphs (a) to

- (c),
- (ii) the variation or revocation of designations,
- (iii) licences to obtain access to funds or other assets that have been frozen by virtue of a designation under this Law, and
- (iv) the unfreezing of funds or other assets in false positive cases within the meaning of section 8D.

Freezing requests.

8B. When making a freezing request, the Policy & Resources Committee must provide the jurisdiction in question with the reason for the request and any relevant information that the Committee may lawfully disclose.

General provisions about designations and freezing requests.

8C. For the avoidance of doubt, there is no requirement for the purposes of making a designation or a freezing request under this Law (including obtaining any information necessary to consider or make the designation or freezing request) that the person subject to the designation or freezing request -

- (a) is or has been the subject of criminal proceedings in the Bailiwick or elsewhere, or

- (b) is given notice of the fact that -
 - (i) where applicable, a designation request has been received from another jurisdiction,
 - (ii) the designation or freezing request is being considered, will be made or, in the case of a freezing request, has been made, as the case may be.

False positive cases.

8D. A case is a false positive case if -

- (a) it involves a person who is not a designated person ("**the innocent party**"),
 - (b) the innocent party has the same name as a designated person or a name that is similar to the name of a designated person, and
 - (c) the rights of the innocent party in respect of any funds or other assets have been inadvertently affected by action taken by another person as a result of the matters in paragraph (b)."
- (3) In section 33, in the appropriate places, insert -

""**false positive cases**": see section 8D," and

""freezing requests": see section 8A,".

(4) After section 35, insert -

"Exclusion of liability.

35A. (1) A person is not to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, in compliance or purported compliance with any prohibition or requirement imposed by or under this Law, unless (for the avoidance of doubt) the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000."

(5) After section 37, insert -

"Power to amend by regulation: FATF standards.

37A. Without prejudice to section 37, the Policy & Resources Committee may by regulation amend this Law where it appears to the Policy & Resources Committee to be necessary or expedient to do so for the purpose of giving effect to standards published by the Financial Action Task Force from time to time relating to combating threats to the integrity of the international financial system."

(6) In section 38 -

(a) for the heading, substitute "General provisions as to subordinate legislation.",

- (b) in subsections (1) and (2), for " Ordinance or order", substitute " Ordinance, order or regulations", and
- (c) in subsection (3), at the end insert "; and in this subsection, a reference to an order (other than to an order of a court) includes a reference to regulations".

Extent.

- 3. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

- 4. This Ordinance may be cited as the Sanctions and Terrorist Asset Freezing (Bailiwick of Guernsey) (Amendment) Ordinance, 2023.

Commencement.

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