

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE CRIMINAL JUSTICE (MISCELLANEOUS AMENDMENTS – PREVENTATIVE
OFFENCES) (BAILIWICK OF GUERNSEY) ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Criminal Justice (Miscellaneous Amendments – Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("the 1999 Law"), the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("the 2002 Law") and the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 ("the 2006 Law"). It creates new corporate offences (based on provisions in place in the UK and Jersey) of failing to prevent money laundering, terrorist financing and tax evasion by employees and other persons acting on behalf of the relevant organisation. It is a defence for the body to prove that it adequately maintained and applied "prevention procedures" when the offence occurred – that is, procedures designed to prevent the commission of the relevant offences. The provisions provide for guidance about prevention procedures to be published by the Policy & Resources Committee (in respect of the 1999 Law and the 2002 Law) and the Committee *for* Home Affairs (in respect of the 2006 Law), and makes clear that such guidance, together with any relevant code of practice or guidance issued by the Guernsey Financial Services Commission, may be taken into account by a court when determining whether a relevant organisation had adequate prevention procedures in place. The tax evasion offences, provided for under the 2006 Law, include facilitating the commission of a tax evasion offence in a foreign country that would be a tax evasion offence if committed in Guernsey. The Ordinance also makes a technical amendment to the definition of terrorist financing, to update it to take account of the changes to the terrorism-related sanctions regimes following the introduction of the Sanctions (Bailiwick of Guernsey) Law, 2018 and changes to the UK regime post-Brexit.

The Criminal Justice (Miscellaneous Amendments – Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023

THE STATES, in pursuance of their Resolution of the 30th September, 2022^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, sections 81A and 82 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^c, section 19 of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006^d and all other powers enabling them in that behalf, hereby order:-

Amendment of the Proceeds of Crime Law.

1. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is amended as follows.

(2) After section 48M insert -

"Failure to prevent money laundering

Offence of failure to prevent money laundering.

48MA. (1) A licensee ("B") is guilty of an offence if a person is engaged in money laundering when acting in the capacity of a person

^a Article X of Billet D'État No. XVII of 2022.

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

^c Order in Council No. XVI of 2002; this enactment has been amended.

^d Order in Council No. XIII of 2006; this enactment has been amended.

associated with B.

(2) It is a defence for B to prove that when the money laundering occurred, B had in place prevention procedures in relation to the activities of the person associated with B.

(3) A person is engaged in money laundering for the purposes of this section if the person engages in conduct which constitutes money laundering, whether or not the person has been convicted of an offence in relation to that conduct; and for this purpose, "**conduct**" includes acts and omissions.

(4) A person acts in the capacity of a person associated with B if that person is -

- (a) an employee of B who is acting in the capacity of an employee,
- (b) an agent of B (other than an employee) who is acting in the capacity of an agent,
- (c) any other person who performs services for or on behalf of B who is acting in the capacity of a person performing such services, or
- (d) a customer of B, or an agent of a customer of B, in relation to any service performed by or on behalf of B.

(5) In determining whether B has adequately maintained and applied prevention procedures in relation to the activities of the person associated with B, the Court may take account of –

- (a) any relevant Code of Practice or guidance issued by the Commission that applies to B, and
- (b) any guidance published by the Committee under section 48MB(1) about prevention procedures.

(6) For the purposes of subsection (4)(c), the question of whether or not the person is a person who performs services for or on behalf of B is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and B.

(7) In this section -

- (a) "**customer**" means a person with a business relationship with another person carrying on a financial services business, and
- (b) "**employee**" means an individual who has entered into or who works under (or where the employment has ceased, who worked under) a contract of employment,

- (c) "**licensee**" has the meaning given in the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,
- (d) "**money laundering**" has the meaning given by section 41(7), and includes "drug money laundering" within the meaning of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, and section 41(7) shall be construed accordingly, and
- (e) "**prevention procedures**" means procedures designed to prevent persons acting in the capacity of a person associated with B being engaged in money laundering.

(8) A person who commits an offence under this section is liable on conviction -

- (a) if an individual, to imprisonment for a term not exceeding two years, or to a fine or to both,
- (b) otherwise, to a fine.

Publication of Guidance.

48MB. (1) Subject to subsection (3), the Committee shall publish guidance (in such manner as the Committee considers appropriate) about prevention procedures within the meaning of section 48MA(7)(e).

(2) For the avoidance of doubt, the Committee may, from time to time, publish revisions to guidance under this section or revised guidance.

(3) The Committee must consult the States of Guernsey Committee for Home Affairs, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark before publishing guidance under this section."

(3) In section 52 (index of defined expressions), in the entry for "money laundering", after "section 41(7)" insert "and see also section 48MA(7)".

Amendment of the Terrorism Law.

2. (1) The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 is amended as follows.

(2) After section 74 and the heading "PART VII GENERAL" insert

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"Offence of failure to prevent terrorist financing.

74A. (1) A licensee ("B") is guilty of an offence if a person is engaged in terrorist financing when acting in the capacity of a person associated with B.

(2) It is a defence for B to prove that when the terrorist financing occurred, B had in place prevention procedures in relation to the activities of the person associated with B.

(3) A person is engaged in terrorist financing for the purposes of this section if the person engages in conduct which constitutes

terrorist financing, whether or not the person has been convicted of an offence in relation to that conduct; and for this purpose, "**conduct**" includes acts and omissions.

(4) A person acts in the capacity of a person associated with B if that person is -

- (a) an employee of B who is acting in the capacity of an employee,
- (b) an agent of B (other than an employee) who is acting in the capacity of an agent,
- (c) any other person who performs services for or on behalf of B who is acting in the capacity of a person performing such services, or
- (d) a customer of B, or an agent of a customer of B, in relation to any service performed by or on behalf of B.

(5) In determining whether B has adequately maintained and applied prevention procedures in relation to the activities of the person associated with B, the Court may take account of -

- (a) any relevant Code of Practice or guidance issued by the Commission that applies to B, and

(b) any guidance published by the Committee under section 74C(1) about prevention procedures.

(6) For the purposes of subsection (4)(c), the question of whether or not the person is a person who performs services for or on behalf of B is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and B.

(7) In this section -

(a) "**customer**" means a person with a business relationship with another person carrying on a financial services business, and

(b) "**employee**" means an individual who has entered into or who works under (or where the employment has ceased, who worked under) a contract of employment,

(c) "**licensee**" has the meaning given in the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, and

(d) "**prevention procedures**" means procedures designed to prevent persons acting in the capacity of a person associated with B being engaged in terrorist financing.

(8) A person who commits an offence under this section is liable on conviction -

- (a) if an individual, to imprisonment for a term not exceeding two years or to a fine or to both,
- (b) otherwise, to a fine.

Offence of failure to prevent terrorist financing: liability of officers, etc.

74B. (1) Where an offence under section 74A is committed by a body corporate or 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) any director, manager, secretary or other similar officer, or any foundation official, of the body corporate,
- (b) where the offence is committed by a partnership, any partner of the partnership,
- (c) where the offence is committed by any other unincorporated body, any officer of that body who is bound to fulfil any duty any breach of which is an offence or, if there is no such officer, any member of the committee or similar governing body, or
- (d) any person purporting to act in any capacity described in paragraphs (a) to (c),

he or she as well as the body corporate or unincorporated 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 that member's functions of management as if he or she were a director.

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

Publication of Guidance.

74C. (1) Subject to subsection (3), and for the avoidance of doubt, the Committee shall publish guidance (in such manner as the Committee considers appropriate) about prevention procedures within the meaning of section 74A(7)(d).

(2) For the avoidance of doubt, the Committee may, from time to time, publish revisions to guidance under this section or revised guidance.

(3) The Committee must consult the States of Guernsey Committee for Home Affairs, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark before publishing guidance under this section."

(3) In section 79(1) –

(a) after the definition of "public place", insert –

""relevant UK sanctions regimes" means –

- (a) the Afghanistan (Sanctions) (EU Exit) Regulations 2020,
 - (b) the Counter-Terrorism (International Sanctions) (Eu Exit) Regulations 2019,
 - (c) the Counter-Terrorism (Sanctions) (EU Exit) Regulations, 2019, and
 - (d) the ISIL (Da-esh) and Al-Qaida (United Nations) (EU Exit) Regulations, 2019," and
- (b) in the definition of "terrorist financing", for the words in paragraph (a) up to (but not including) "and, for the purposes of this definition", substitute "constitutes an offence under section 8, 9, 10, 11 or 11A, or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011, or an offence under section 3 of the Sanctions (Bailiwick of Guernsey) Law, 2018 in respect of the relevant UK sanctions regimes implemented by the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020".

Amendment of the Miscellaneous Provisions Law.

3. (1) The Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 ("**the Law**") is amended as follows.

(2) After section 12, insert -

"Failure to prevent facilitation of tax evasion

Acting in capacity of a person associated with a relevant body.

12A. (1) For the purposes of sections 12B and 12C, a person ("P") acts in the capacity of a person associated with a relevant body ("B") if P is -

- (a) an employee of B who is acting in the capacity of an employee,
- (b) an agent of B (other than an employee) who is acting in the capacity of an agent, or
- (c) any other person who performs services for or on behalf of B who is acting in the capacity of a person performing such services.

(2) For the purposes of subsection (1)(c), the question whether or not P is a person who provides services for or on behalf of B is to be determined by reference to all the relevant circumstances, and not merely by reference to the nature of the relationship between P and B.

Offence of failure to prevent facilitation of Guernsey tax evasion offences.

12B. (1) A relevant body ("B") is guilty of an offence if a person commits a Guernsey tax evasion facilitation offence when acting in the capacity of a person associated with B.

(2) It is a defence for B to prove that, when the Guernsey tax evasion facilitation offence was committed -

(a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or

(b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.

(3) In this section "**prevention procedures**" means procedures designed to prevent persons acting in the capacity of a person associated with B from committing Guernsey tax evasion facilitation offences.

(4) In determining whether B had in place reasonable prevention procedures, or alternatively whether it was reasonable for B not to have any prevention procedures in place, the court may take account of –

(a) any relevant Code of Practice or guidance issued by the Commission that applies to B, and

(b) any guidance published by the Committee under section 12F(1) about prevention procedures.

(5) Conduct carried out with a view to the fraudulent evasion of tax by another person is not to be regarded as a Guernsey tax evasion facilitation offence by virtue of paragraph (a) of the definition of "**Guernsey tax evasion facilitation offence**" set out in section 12G unless the

other person has committed a Guernsey tax evasion offence facilitated by that conduct.

(5) For the purposes of this section and section 12G, "tax" means a tax imposed under the law of any part of the Bailiwick, and includes social insurance contributions.

(6) A relevant body guilty of an offence under this section is liable on conviction to a fine.

Offence of failure to prevent facilitation of foreign tax evasion offences.

12C. (1) A relevant body ("B") is guilty of an offence if at any time -

- (a) a person commits a foreign tax evasion facilitation offence when acting in the capacity of a person associated with B, and
- (b) any of the conditions in subsection (2) are satisfied.

(2) The conditions are -

- (a) that B is a body incorporated, or a partnership formed, under the law of any part of the Bailiwick,
- (b) that B carries on business or part of a business in the Bailiwick,

- (c) that any conduct constituting part of the foreign tax evasion facilitation offence takes place in the Bailiwick,

and for the purposes of paragraph (a) "**partnership**" means -

- (i) a partnership within the Partnership (Guernsey) Law, 1995 or the Partnership (Alderney) Law, 2021, or
- (ii) a limited partnership registered under the Limited Partnerships (Guernsey) Law 1995, or the Limited Partnerships (Alderney) Law, 2021,

or a firm or entity of a similar character formed under the law of a country or territory outside the Bailiwick.

(3) It is a defence for B to prove that, when the foreign tax evasion facilitation offence was committed -

- (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
- (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.

(4) In this section "**prevention procedures**" means procedures designed to prevent persons acting in the capacity of a person associated with B from committing foreign tax evasion facilitation offences under the law of the foreign country concerned.

(5) In determining whether B had in place reasonable prevention procedures, or alternatively whether it was reasonable for B not to have any prevention procedures in place, the court may take account of –

- (a) any relevant Code of Practice or guidance issued by the Commission that applies to B, and
- (b) any guidance published by the Committee under section 12F(1) about prevention procedures.

(6) A relevant body guilty of an offence under this section is liable on conviction to a fine.

Offences under sections 12B and 12C: extra-territorial application and jurisdiction.

12D. It is immaterial for the purposes of section 12B or 12C (except to the extent provided for by section 12C(2)) whether -

- (a) any relevant conduct of a relevant body, or
- (b) any conduct which constitutes part of a relevant Guernsey tax evasion facilitation offence or foreign tax evasion facilitation offence, or

- (c) any conduct which constitutes part of a relevant Guernsey tax evasion offence or foreign tax evasion offence,

takes place in the Bailiwick or elsewhere.

Offences under sections 12B and 12C: liability of officers, etc.

12E. (1) Where an offence under section 12B or 12C is committed by a body corporate or 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) any director, manager, secretary or other similar officer, or any foundation official, of the body corporate,
- (b) where the offence is committed by a partnership, any partner of the partnership, or
- (c) any person purporting to act in any capacity described in paragraph (a) to (b),

he or she as well as the body corporate or partnership 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 that member's functions of management as if he or she were a director.

(3) Where any such offence is alleged to have been

committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(4) In this section, "**partnership**" has the meaning given in section 12C(2).

Publication of Guidance.

12F. (1) Subject to subsection (3), the Committee shall publish guidance (in such manner as the Committee considers appropriate) about prevention procedures within the meaning of section 12B(3) and 12C(4).

(2) For the avoidance of doubt, the Committee may, from time to time, publish revisions to guidance under this section or revised guidance.

(3) The Committee must consult the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark before publishing guidance under this section.

Interpretation of sections 12A to 12F.

12G. For the purposes of sections 12A to 12F, the following expressions have the following meanings -

"**business**" includes an undertaking,

"**the Committee**" means the States of Guernsey Committee for Home Affairs,

"**conduct**" includes acts and omissions,

"employee" means an individual who has entered into or who works under (or where the employment has ceased, who worked under) a contract of employment,

"foreign country" means a country or territory outside the Bailiwick,

"foreign tax evasion facilitation offence" means conduct which -

- (a) amounts to an offence under the law of a foreign country,
- (b) relates to the commission by another person of a foreign tax evasion offence under that law, and
- (c) would, if the foreign tax evasion offence were a Guernsey tax evasion offence, amount to a Guernsey tax evasion facilitation offence,

"foreign tax evasion offence" means conduct which -

- (a) amounts to an offence under the law of a foreign country,
- (b) relates to a breach of a duty relating to a tax imposed under the law of that country, and

- (c) would be regarded by the courts of any part of the Bailiwick as amounting to being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of that tax,

"Guernsey tax evasion facilitation offence" means an offence under the law of any part of the Bailiwick consisting of -

- (a) being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by another person,
- (b) aiding, abetting, counselling or procuring the commission of a Guernsey tax evasion offence, or
- (c) being involved in the commission of an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax,

"Guernsey tax evasion offence" means -

- (a) an offence of cheating the public revenue, or
- (b) an offence under the law of any part of the Bailiwick consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax, and

"**relevant body**" means a body corporate or partnership (wherever incorporated or formed).".

Extent.

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

Citation.

5. This Ordinance may be cited as the Criminal Justice (Miscellaneous Amendments - Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023.

Commencement.

6. This Ordinance shall come into force on the day appointed for this purpose by regulations made by the States of Guernsey Committee for Home Affairs; and different dates may be appointed for different provisions and for different purposes.