

GUERNSEY STATUTORY INSTRUMENT

2008 No. 49

**The Criminal Justice (Proceeds of Crime) (Legal  
Professionals, Accountants and Estate Agents)  
(Bailiwick of Guernsey)  
Regulations, 2008<sup>a</sup>**

*[CONSOLIDATED TEXT]*

**NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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<sup>a</sup> Amended by G.S.I. No. \*\* of 2008 (The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2008)

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**The Criminal Justice (Proceeds of Crime) (Legal  
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GUERNSEY STATUTORY INSTRUMENT

2008 No 49.

**The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008**

<i>Made</i>	<i>8<sup>th</sup> September, 2008</i>
<i>Coming into operation</i>	<i>See regulation 2</i>
<i>Laid before the States</i>	<i>29<sup>th</sup> October, 2008</i>

**THE POLICY COUNCIL**, in exercise of the powers conferred upon it by sections 49A, 49D and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>b</sup>, hereby makes the following Regulations:-

**PART I**

**INTRODUCTORY PROVISIONS AND RISK ASSESSMENT**

**Citation.**

1. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008.

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<sup>b</sup> Order in Council No. VIII of 1999, as amended by Order in Council No. II of 2005 and No. \*\* of 2007, Ordinance XXVIII of 1999, Ordinance XII of 2002, G.S.I. No. 27 of 2002 and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

### **Commencement.**

2. (1) Regulations 1, 2 and 12, Part IV and regulations 25, 26(1)(a) and 27, to 30 shall come into force on the 8<sup>th</sup> October, 2008.

(2) All remaining provisions of these Regulations (other than regulation 15(d)) not brought into force under paragraph (1) shall come into force -

(a) in respect of a prescribed business which is also a relevant business for the purposes of the Law by virtue of paragraph 5 ("Legal and accountancy services") of Schedule 2 to the Law, on the 7<sup>th</sup> November, 2008, and

(b) in respect of a prescribed business which is also a relevant business for the purposes of the Law by virtue of paragraph 3 ("Estate agency") of Schedule 2 to the Law, on the 5<sup>th</sup> December, 2008.

(3) Regulation 15(d) shall come into force on the 1<sup>st</sup> January 2009.

### **Risk assessment and mitigation.**

3. (1) A prescribed business must -

(a) carry out a suitable and sufficient business risk assessment -

(i) as soon as reasonably practicable after these Regulations come into force, or

(ii) in the case of a prescribed business which only becomes such on or after the date these

Regulations come into force, as soon as reasonably practicable after it becomes such a business,

- (b) regularly review its business risk assessment so as to keep it up to date and, where, as a result of that review, changes to the business risk assessment are required, it must make those changes,
- (c) prior to the establishment of a business relationship or the carrying out of an occasional transaction, undertake a risk assessment of that proposed business relationship or occasional transaction,
- (d) regularly review any risk assessment carried out under subparagraph (c) so as to keep it up to date and, where changes to that risk assessment are required, it must make those changes, and
- (e) ensure that its policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk.

(2) A prescribed business must have regard to -

- (a) any relevant rules and guidance in the Handbook, and
- (b) any notice issued by the Commission under the Law,

in determining, for the purposes of these Regulations, what constitutes a high or low

risk.

PART II  
CLIENT DUE DILIGENCE ETC.

**Client due diligence.**

4. (1) A prescribed business shall, subject to the following provisions of these Regulations, ensure that the steps in paragraph (3) are carried out -

- (a) when carrying out the activities described in paragraphs (2)(a) and (b), and
- (b) in the circumstances described in paragraphs (2)(c) and (d).

(2) The activities and circumstances referred to in paragraph (1) are -

- (a) establishing a business relationship,
- (b) carrying out an occasional transaction,
- (c) where the prescribed business knows or suspects or has reasonable grounds for knowing or suspecting -
  - (i) that, notwithstanding any exemptions or thresholds pursuant to these Regulations, any party to a business relationship is engaged in money laundering or terrorist financing, or
  - (ii) that it is carrying out a transaction on behalf of a

person, including a beneficial owner or underlying principal, who is engaged in money laundering or terrorist financing, and

(d) where the prescribed business has doubts about the veracity or adequacy of previously obtained identification data.

(3) The steps referred to in paragraph (1) are that -

(a) the client shall be identified and his identity verified using identification data,

(b) any person purporting to act on behalf of the client shall be identified and his identity and his authority to so act shall be verified,

(c) the beneficial owner and underlying principal shall be identified and reasonable measures shall be taken to verify such identity using identification data and such measures shall include, in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the client,

(d) a determination shall be made as to whether the client is acting on behalf of another person and, if the client is so acting, reasonable measures shall be taken to obtain sufficient identification data to identify and verify the identity of that other person,

(e) information shall be obtained on the purpose and



intended nature of each business relationship, and

- (f) a determination shall be made as to whether the client, beneficial owner and any underlying principal is a politically exposed person.

(4) A prescribed business must have regard to any relevant rules and guidance in the Handbook in determining, for the purposes of this regulation and regulation 5, what constitutes reasonable measures.

**Additional client due diligence.**

5. (1) Where a prescribed business is required to carry out client due diligence, it must also carry out enhanced client due diligence in relation to the following business relationships or occasional transactions -

- (a) a business relationship or occasional transaction in which the client or any beneficial owner or underlying principal is a politically exposed person,
- (b) a business relationship or an occasional transaction -
  - (i) where the client is established or situated in a country or territory that does not apply, or insufficiently applies, the Financial Action Task Force Recommendations on Money Laundering, or
  - (ii) which the prescribed business considers to be a high risk relationship, taking into account any notices or warnings issued from time to time by the Commission, and

(c) a business relationship or an occasional transaction which has been assessed as a high risk relationship under regulation 3(1)(c).

(2) In paragraph (1) -

(a) **"enhanced client due diligence"** means ~~additional steps, in relation to identification and verification, to those required under regulation 4(3) including the following steps—~~

- obtaining senior management approval for establishing, or, in the case of an existing business relationship continuing that relationship or undertaking an occasional transaction;
- taking reasonable measures to establish the source of any funds and of the wealth of the client and beneficial owner and underlying principal;
- carrying out more frequent and more extensive ongoing monitoring in accordance with regulation 11; and

taking one or more of the following steps as would be appropriate to the particular business relationship or occasional transaction:

- obtaining additional identification data;
- verifying additional aspects of the client's identity; and
- obtaining additional information to understand

the purpose and intended nature of each business relationship.

~~(i) — considering whether additional identification data needs to be obtained and, where the prescribed business considers such data needs to be obtained, obtaining it,~~

~~(ii) — considering whether additional aspects of the client's identity need to be verified and, where the prescribed business considers such aspects need to be verified, verifying them,~~

~~(iii) — considering whether additional information is required to understand the purpose and intended nature of each business relationship, and, where the prescribed business considers that additional information is so required, obtaining such information,~~

~~(iv) — considering whether it is appropriate to take reasonable measures to establish the source of any funds and of the wealth of the client and any beneficial owner and underlying principal, and, where the prescribed business considers that it is so appropriate, taking such measures, and~~

~~(v) — carrying out more frequent and more extensive ongoing monitoring in accordance with regulation 11, and~~

(b) **"politically exposed person"** means -

- (i) a person who has, or has had at any time, a prominent public function or who has been elected or appointed to such a function in a country or territory other than the Bailiwick including, without limitation -
  - (A) heads of state or heads of government,
  - (B) senior politicians and other important officials of political parties,
  - (C) senior government officials,
  - (D) senior members of the judiciary,
  - (E) senior military officers, and
  - (F) senior executives of state owned body corporates,
- (ii) an immediate family member of such a person including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and in this subparagraph "**partner**" means a person who is considered by the law of the country or territory in which the prescribed public function is held as being equivalent to a spouse, or
- (iii) a close associate of such a person, including,

without limitation -

- (A) a person who is widely known to maintain a close business relationship with such a person, or
- (B) a person who is in a position to conduct substantial financial transactions on behalf of such a person.

~~(3) — Where a business relationship falls within paragraph (1)(a), a prescribed business must —~~

- ~~(a) — ensure that senior management approval is obtained for establishing, or, in the case of an existing business relationship, continuing that relationship,~~
- ~~(b) — take reasonable measures to establish the source of any funds and of the wealth of the client and beneficial owner and underlying principal.~~

(34) Where the client was not a Guernsey resident who was physically present when a prescribed business carried out an activity set out in regulation 4(2)(a) or (b), a prescribed business must take adequate measures to compensate for the specific risk arising as a result -

- (a) when carrying out client due diligence, and
- (b) where the activity was establishing a business relationship, when carrying out monitoring of that relationship pursuant to regulation 11.

**Client due diligence for low risk relationships.**

6. (1) Where a prescribed business is required to carry out client due diligence in relation to a business relationship or occasional transaction which has been assessed as a low risk relationship pursuant to regulation 3(1)(c), it may, subject to the following provisions of this regulation apply reduced or simplified client due diligence measures.

(2) The discretion in paragraph (1) may only be exercised -

- (a) in accordance with the requirements set out in chapter 6 of the Handbook, and
- (b) provided that the client and every beneficial owner and underlying principal is established or situated in the Bailiwick or a country or territory listed in Appendix C to the Handbook.

(3) For the avoidance of doubt, simplified or reduced client due diligence shall not be applied -

- (a) where the prescribed business knows or suspects or has reasonable grounds for knowing or suspecting that any party to a business relationship or any beneficial owner or underlying principal is engaged in money laundering or terrorist financing, or
- (b) in relation to business relationships or occasional transactions where the risk is other than low.

**Timing of identification and verification.**

7. (1) Identification and verification of the identity of any person or legal arrangement pursuant to regulations 4 to 6 must, subject to paragraph (2) and regulation 4(1)(b), be carried out before or during the course of establishing a business relationship or before carrying out an occasional transaction.

(2) Verification of the identity of the client and of any beneficial owners and underlying principals may be completed following the establishment of a business relationship provided that -

- (a) it is completed as soon as reasonably practicable thereafter,
- (b) the need to do so is essential not to interrupt the normal conduct of business, and
- (c) appropriate and effective policies, procedures and controls are in place which operate so as to manage risk.

#### **Anonymous accounts**

8. A prescribed business must, in relation to all clients-

- (a) not set up anonymous accounts or accounts in fictitious names ~~which it knows, or has reasonable cause to suspect, to be fictitious~~, and
- (b) maintain accounts in a manner which facilitates the meeting of the requirements of these Regulations.

#### **Non-compliance with client due diligence measures etc.**

9. Where a prescribed business cannot comply with any of regulations

4(3)(a) to (d) it must -

- (a) in the case of an existing business relationship, terminate that business relationship,
- (b) in the case of a proposed business relationship or occasional transaction, not enter into that business relationship or carry out that occasional transaction with the client, and
- (c) consider whether a disclosure must be made pursuant to Part I of the Disclosure Law<sup>c</sup> or section 12 of the Terrorism Law<sup>d</sup>.

**Introduced business.**

**10.** (1) In the circumstances set out in paragraph (2), a prescribed business may accept a written confirmation of identity and other matters from an introducer in relation to the requirements of regulation 4(3)(a) to (e) provided that -

- (a) the prescribed business also requires copies of identification data and any other relevant documentation to be made available by the introducer to the prescribed business upon request and without delay, and

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<sup>c</sup> Approved by resolution of the States on 30<sup>th</sup> May 2007.

<sup>d</sup> Order in Council No. XVI of 2002 as amended by Order in Council No. XIII of 2006 and the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.



- (b) the introducer, subject to limited exceptions provided for in chapter 4 of the Handbook, keeps such identification data and documents.
- (2) The circumstances referred to in paragraph (1) are that the introducer -
  - (a) is an appendix C business, or
  - (b) is either an overseas branch, or a member, of the same group of bodies corporate as, the prescribed business with which it is entering into the business relationship ("**receiving prescribed business**"), and -
    - (i) the ultimate parent body corporate of the group of bodies corporate of which both the introducer and the receiving prescribed business are members, falls within subparagraph (a), and
    - (ii) the introducer and the receiving prescribed business are subject to effective policies, procedures and controls on countering money laundering and terrorist financing of that group of bodies corporate.
- (3) Notwithstanding paragraph (1), where reliance is placed upon the introducer the responsibility for complying with the relevant provisions of regulation 4 remains with the receiving prescribed business.

PART III  
ENSURING COMPLIANCE AND RECORD KEEPING

**Monitoring transactions and other activity.**

**11.** (1) A prescribed business shall perform ongoing and effective monitoring of any existing business relationship, which shall include-

(a) reviewing identification data to ensure it is kept up to date and relevant in particular for high risk relationships or clients in respect of whom there is a high risk,

(b) scrutiny of any transactions or other activity, paying particular attention to all -

(i) complex transactions,

(ii) transactions which are both large and unusual, and

(iii) unusual patterns of transactions,

which have no apparent economic purpose or no apparent lawful purpose, and

(c) ensuring that the way in which identification data is recorded and stored is such as to facilitate the ongoing monitoring of each business relationship.

(2) The extent of any monitoring carried out under this regulation and the frequency at which it is carried out shall be determined on a risk sensitive basis including whether or not the business relationship is a high risk relationship.

**Reporting suspicion.**

12. A prescribed business shall -

- (a) appoint a person of at least management level as the money laundering reporting officer and provide the name and title of that person to the Commission and the Financial Intelligence Service as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment,
- (b) nominate another person (a "**nominated officer**") to carry out the functions of the money laundering reporting officer in his absence, and ensure that any relevant employee is aware of the name of that nominated officer,
- (c) ensure that where a relevant employee, other than the money laundering reporting officer, is required to make a disclosure under Part I of the Disclosure Law or section 12 of the Terrorism Law, that this is done by way of a report to the money laundering reporting officer, or, in his absence, to a nominated officer,
- (d) ensure that the money laundering reporting officer, or in his absence a nominated officer, in determining whether or not he is required to make a disclosure under Part I of the Disclosure Law or section 12 of the Terrorism Law, takes into account all relevant information,
- (e) ensure that the money laundering reporting officer, or, in his absence, a nominated officer, is given prompt access to any other information which may be of

assistance to him in considering any report, and

- (f) ensure that it establishes and maintains such other appropriate and effective procedures and controls as are necessary to ensure compliance with requirements to make disclosures under Part I of the Disclosure Law and sections 12 of the Terrorism Law.

**Employee screening and training.**

**13.** (1) A prescribed business shall maintain appropriate and effective procedures, when hiring employees or admitting any person as a partner in the business, for the purpose of ensuring high standards of employee and partner probity and competence.

(2) A prescribed business shall ensure that relevant employees, and any partners in the business, receive comprehensive ongoing training in relation to or concerning -

- (a) the relevant enactments, these Regulations and the Handbook,
- (b) the personal obligations of employees, and partners, and their potential criminal liability under these Regulations and the relevant enactments,
- (c) the implications of non-compliance by employees, and partners, with any rules or guidance made for the purposes of these Regulations, and
- (d) its policies, procedures and controls for the purposes of forestalling, preventing and detecting money laundering

and terrorist financing.

(3) A prescribed business shall identify relevant employees and partners in the business who, in view of their particular responsibilities, should receive additional and ongoing training, appropriate to their roles, in the matters set out in paragraph (2) and must provide such additional training.

**Record-keeping.**

14. (1) A prescribed business shall keep-

- (a) a transaction document and any client due diligence information, or
- (b) a copy thereof,

for the minimum retention period.

(2) Where a prescribed business is required by any enactment, rule of law or court order to provide a transaction document or any client due diligence information to any person before the end of the minimum retention period, the prescribed business shall-

- (a) keep a copy of the transaction document or client due diligence information until the period has ended or the original is returned, whichever occurs first, and
- (b) maintain a register of transaction documents and client due diligence information so provided.

(3) A prescribed business shall also keep records of -

- (a) any reports made to a money laundering reporting officer as referred to in regulation 12 and of any disclosure made under Part I of the Disclosure Law or section 12 of the Terrorism Law made other than by way of a report to the money laundering reporting officer, for five years starting from-
    - (i) in the case of a report or a disclosure in relation to a business relationship, the date the business relationship ceased, or
    - (ii) in the case of a report or a disclosure in relation to an occasional transaction, the date that transaction was completed,
  - (b) any training carried out under regulation 13 for five years starting from the date the training was carried out,
  - (c) any minutes or other documents prepared pursuant to regulation 15(c) until -
    - (i) the expiry of a period of five years starting from the date they were finalised, or
    - (ii) they are superseded by later minutes or other documents prepared under that regulation,
- whichever occurs later, and
- (d) its policies, procedures and controls which it is required to establish and maintain pursuant to these Regulations,

until the expiry of a period of five years starting from the date that they ceased to be operative.

(4) Documents and client due diligence information, including any copies thereof, kept under this regulation -

- (a) may be kept in any manner or form, provided that they are readily retrievable, and
- (b) must be made available promptly to the Financial Intelligence Service, the Commission or any other person where such documents or client due diligence information are requested pursuant to these Regulations or any relevant enactment.

**Ensuring compliance, corporate responsibility and related requirements.**

15. A prescribed business must, in addition to complying with the preceding requirements of these Regulations -

- (a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of forestalling, preventing and detecting money laundering and terrorist financing,
- (b) establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of these Regulations and such policy shall include provision as to the extent and frequency of such reviews,
- (c) ensure that a review of its compliance with these

Regulations is discussed and minuted at a meeting of the board at appropriate intervals, and in considering what is appropriate a prescribed business must have regard to the risk taking into account -

- (i) the size, nature and complexity of the prescribed business,
  - (ii) its clients, products and services, and
  - (iii) the ways in which it provides those products and services,
- (d) on, or within 14 days following 5 December in each year send to the Commission a certificate, in such form as is approved by the Commission for the purpose, signed on behalf of the business certifying, in respect of the period of 12 months ending on the 5 December in question (or throughout the period commencing upon first registration of the business under regulation 16 and the 5 December in question) -
- (i) that it has, complied with the requirements of-
    - (A) these Regulations,
    - (B) the Handbook, and
    - (C) any instructions, or notice, issued by the Commission under the Law, and



- (ii) the number of full time (or full time equivalent) members of staff (including executive directors and partners) employed by, or forming, the business, and
- (e) have regard to the provisions of the Handbook.

#### PART IV REGISTRATION

##### **Registration of prescribed businesses.**

16. (1) Subject to subsection (5), a prescribed business carrying on, or holding itself out as carrying on, business in, or from within, the Bailiwick must register with the Commission in accordance with these Regulations.

(2) A prescribed business which, by virtue of paragraph (1), is under an obligation to register shall submit, and pay, to the Commission -

- (a) a statement, in such form and manner as the Commission may determine, of -
  - (i) the legal name and any trading names of the business,
  - (ii) its place and date of incorporation or establishment,
  - (iii) its principal place of business and any other business addresses in the Bailiwick,
  - (iv) details of the type or types of business carried

out,

- (v) the name of the money laundering reporting officer, and
  - (vi) the number of full time (or full time equivalent) members of staff (including executive directors and partners), and
- (b) subject to paragraph (3) -
- (i) where submission of the statement referred to in subparagraph (a) is made on or before 31 December 2008, a non-refundable registration fee of £450 plus, where the business has more than 5 full time (or full time equivalent) members of staff (including executive directors and partners), whichever is the lesser of -
    - (A) an amount calculated on the basis of £70 for each full time (or full time equivalent) member of staff (including executive directors and partners), less £350, or
    - (B) £1,400, or
  - (ii) where submission of the statement referred to in subparagraph (a) is made after 31 December 2008, a non-refundable registration fee calculated in accordance with the formula -

$$A = \frac{B}{12} \times C$$

where -

A is the fee payable,

B is the fee which would be payable under item (i), if submission of the statement had been made on or before 31 December 2008, and

C is the number of complete months from the date of submission of the statement to 31 December inclusive.

(3) Any fee payable under paragraph (2)(b) or regulation 17(2) shall be reduced as follows -

(a) by 50 per centum where the registration relates to a business -

(i) which is –

(A) registered, or

(B) in the opinion of the Commission is, or will be, under an obligation to register (and does so register within 4 months of the date upon which the Commission first

formed its opinion),

under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, or

(ii) which is a member of a group of bodies corporate where one or more other members of that group are also under an obligation to pay a registration fee to the Commission under this regulation, or

(b) by 75 per centum where the registration relates to a business -

(i) which is –

(A) registered, or

(B) in the opinion of the Commission is, or will be, under an obligation to register (and does so register within 4 months of the date upon which the Commission first formed its opinion),

under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, and

(ii) which is a member of a group of bodies corporate where one or more other members of

that group are also under an obligation to pay a registration fee to the Commission under this regulation.

- (4) On receipt of -
- (a) a statement containing all the information referred to in paragraph (2)(a), and
  - (b) the registration fee,

the Commission shall register the prescribed business.

(5) A prescribed business is not required to be registered with the Commission where -

- (a) the total turnover of the person carrying on the prescribed business in respect of the prescribed business does not exceed £50,000 per annum,
- (b) the prescribed business -
  - (i) if it is an estate agent, does not hold deposits, or
  - (ii) if it is a prescribed business other than an estate agent, does not carry out occasional transactions, that is to say any transactions involving more than £10,000 carried out by the prescribed business in question in the course of that business, where no business relationship has been proposed or established, including such

transactions carried out in a single operation or two or more operations that appear to be linked,

- (c) the services of the prescribed business are provided only to customers resident in the Bailiwick, and
- (d) the funds received by the prescribed business are drawn on a bank operating from or within the Bailiwick.

**Validity of registration, annual fee and general requirements.**

17. (1) The registration of a prescribed business shall, subject to payment of the annual fee under paragraph (2), remain effective until it is surrendered under regulation 20.

(2) An annual fee calculated in the same manner as provided for under regulation 16(2)(b)(i) (subject to any reduction applicable under regulation 16(3)) shall be payable, on, or within 30 days following 1 January in each calendar year following the year of registration, in respect of each prescribed business registered under this Part; provided that no annual fee shall be payable for 2009 in respect of a prescribed business which registers under this Part during 2008.

(3) A prescribed business must inform the Commission of any change occurring to the information given to the Commission for the purposes of its registration under regulation 16(2)(a)(i) to (v) or to any information given to the Commission thereafter -

- (a) prior to making such a change, or
- (b) where a change is sudden or unexpected, promptly after such change is made,

and for the purposes of this paragraph a change to such information shall include the intention to cease being a prescribed business to which these Regulations apply.

**Conditions of registration.**

18. (1) The Commission may, when registering a prescribed business or at any time thereafter, impose such conditions in respect of the registration as it thinks fit.

(2) The Commission may vary or rescind any condition of a registration.

(3) Without prejudice to the generality of paragraph (1), the conditions which may be imposed in respect of a registration may make provision in the interests of the clients or potential clients of the prescribed business and for the protection of the public or of the reputation of the Bailiwick as a finance centre, and conditions may (without limitation) -

- (a) require the prescribed business to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) impose limitations on the acceptance or carrying on of business,
- (c) prohibit the prescribed business from soliciting (whether at all or in any specified manner) business, either generally or from particular persons or classes of persons, or
- (d) require the prescribed business to provide, in whatever

form and manner and at whatever time the Commission may reasonably determine, evidence of compliance with any provision of, or made under, any of the relevant enactments.

(4) The Commission may give public notice of the imposition, variation or rescission of a condition in respect of a registration and the date from which any such condition is effective, and, in deciding whether or not to do so, the Commission shall have regard to the interests of the clients and potential clients of the prescribed business and the protection of the public and the reputation of the Bailiwick as a finance centre.

(5) Where the Commission decides, otherwise than with the agreement of the prescribed business concerned, to impose, vary or rescind any condition in respect of a registration, the Commission shall serve upon the prescribed business concerned, in accordance with the provisions of regulation 22, notice in writing of the decision setting out particulars of the condition in question.

#### **Suspension of registration.**

**19.** (1) The Commission may suspend the prescribed business's registration at the request of the business concerned.

(2) The suspension of a registration in pursuance of paragraph (1) shall be for such period as is approved for the purpose by the Commission.

(3) During a period of suspension of a registration in pursuance of paragraph (1) the suspended prescribed business may not carry on, or hold itself out as carrying on, business of the description to which the registration relates in or from within the Bailiwick.

#### **Surrender of registration.**



20. (1) A prescribed business may surrender its registration by notice in writing served upon the Commission.

(2) A surrender shall take effect upon service of the notice or at such later date as may be specified therein and, where a later date is so specified, the prescribed business may by a further notice in writing served upon the Commission substitute an earlier date upon which the surrender is, subject as aforesaid, to take effect, not being earlier than the date upon which the further notice was served.

(3) The surrender of a registration shall be irrevocable unless it is expressed to take effect on a particular date and, before that date, the Commission, upon the written application of the prescribed business concerned by notice in writing to that business, allows the surrender to be withdrawn.

**List of, and information as to, registered prescribed businesses.**

21. (1) The Commission shall -

- (a) establish and maintain, in such form as the Commission may determine, a list of all prescribed businesses which are for the time being registered under this Part,
- (b) make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of that list, and
- (c) publish a copy of the list on the Commission's official website.

(2) The list maintained under paragraph (1) shall contain, in relation to each prescribed business -

- (a) a statement of -
  - (i) the legal name and any trading names of the business, and
  - (ii) its principal place of business and any other business addresses in the Bailiwick, and
- (b) such other particulars as the Commission may determine.

(3) If at any time it appears to the Commission that the list maintained under paragraph (1), or any particular contained in an entry in that list, is inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

- (4) The Commission may give public notice of the fact -
  - (a) that a particular business -
    - (i) has been registered under this Part, or
    - (ii) has ceased to be registered by virtue of the voluntary suspension or surrender of the registration, or
  - (b) that a condition upon the registration of a particular business has been imposed, varied or rescinded,

and, in deciding whether or not to do so, the Commission shall have regard to the

interests of the public and the protection and enhancement of the reputation of the Bailiwick as a finance centre.

**Notice of Commission's decision to impose conditions, etc.**

22. Notice of a decision of the Commission required to be served under regulation 18(5) -

- (a) shall state the grounds of the Commission's decision, and
- (b) shall give particulars of the right of appeal conferred by regulation 23.

**Appeals against decisions of Commission.**

23. (1) A person aggrieved by a decision of the Commission to impose, vary or rescind any condition in respect of his registration under regulation 18 may appeal to the Court against the decision.

- (2) The grounds of an appeal under this regulation 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.

- (3) An appeal under this regulation shall be instituted -
- (a) within a period of 28 days immediately following the date of the notice of the Commission's decision, and
  - (b) by summons served on the Chairman, or vice-Chairman, of the Commission stating the grounds and material facts on which the appellant relies.

(4) The Commission may, where an appeal under this regulation has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and upon hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just,

and the provisions of this paragraph are without prejudice to the inherent powers of the Court or to any other rule of law empowering the Court to dismiss the appeal or the application for want of prosecution.

- (5) On an appeal under this regulation the Court may -
- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(6) On an appeal under this regulation against a decision described in paragraph (1) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition in question, or the variation or rescission thereof, pending the determination of the appeal.

(7) In this regulation, "**the Court**" means the Royal Court constituted by the Bailiff sitting unaccompanied by the Jurats, and the Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto.

(8) An appeal from a decision of the Royal Court made under these Regulation shall lie to the Court of Appeal on a question of law.

## PART V MISCELLANEOUS

### **Extension of sections 49B and 49C of the Law.**

24. Sections 49B and 49C of the Law extend in respect of any prescribed business as if references in those sections to "financial services business" or "section 49" were references to "prescribed business" and "section 49A" respectively.

### **Offences as to false or misleading information, etc.**

25. (1) If a person -

(a) in connection with the submission of a statement for the purposes of obtaining a registration under these Regulations,

- (b) in purported compliance with a requirement imposed by these Regulations, or
- (c) otherwise than as mentioned in paragraph (a) or (b), but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by him would or might be used by the Commission for the purpose of exercising its functions conferred by these Regulations,

does any of the following: -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or

misleading in a material particular,

he is guilty of an offence.

(2) A prescribed business, or any director, controller, partner, senior officer or beneficial owner of a prescribed business, who fails to provide the Commission with any information in his possession knowing or having reasonable cause to believe -

- (a) that the information is relevant to the exercise by the Commission of its functions under these Regulations in relation to the business, and
- (b) that the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the business,

is guilty of an offence.

**Other offences.**

26. (1) A prescribed business -

- (a) which -
  - (i) carries on, or
  - (ii) holds itself out as carrying on,

business in, or from within, the Bailiwick whilst it is not registered in accordance with regulation 16, or

- (b) which is a registered prescribed business, or whilst under an obligation to register in accordance with regulation 16 is not so registered, and which contravenes, or fails to comply with any other provision of these Regulations,

is guilty of an offence.

(2) A registered prescribed business which breaches, or fails to comply with, a condition imposed under regulation 18 is guilty of an offence.

**Penalties.**

27. A person or body guilty of an offence under regulation 25 or 26 is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both.

**Transitional provisions.**

28. (1) A prescribed business must, on the 5<sup>th</sup> December, 2008, or within 14 days thereafter, send to the Commission a certificate, in such form as is approved by the Commission for the purpose, signed on behalf of the business certifying that it has, throughout the period -

- (a) commencing -



- (i) on the day that these Regulations are made, or
  - (ii) if later, the day that the business commences trading, and
- (b) ending on 5<sup>th</sup> December, 2008,

satisfied the requirements set out in paragraph (2).

(2) The requirements for the purposes of paragraph (1) are that the business has complied with -

- (a) such of these Regulations,
- (b) such provisions of the Handbook issued by the Commission, and
- (c) such instructions, or notices, issued by the Commission under the Law,

as may be in force during the relevant period referred to in paragraph (1) .

**Limitation of liability of Commission.**

**29.** (1) No liability shall be incurred by -

- (a) the Commission, or
- (b) any officer, servant or member of the Commission,

in respect of anything done or omitted to be done after the commencement of these Regulations in the discharge or purported discharge of its or their functions and

powers under these Regulations.

- (2) Subsection (1) does not apply -
  - (a) if the thing done or omitted to be done is shown to have been in bad faith, or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>e</sup>.

(3) The Commission shall have no obligation to make any enquiries concerning -

- (a) a registration, or
- (b) the continued registration,

of any prescribed business.

**Interpretation.**

**30.** (1) In these Regulations, unless the context requires otherwise -

**"account"** means a bank account and any other business relationship between a prescribed business and a client which is of a similar nature having regard to the services offered by the prescribed business,

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<sup>e</sup> Order in Council No. XIV of 2000 and No. I of 2005.

**"Advocate"** means an Advocate of the Royal Court of Guernsey,

**"anonymous account"** means an account or business relationship set up in such a manner as to deliberately conceal the true identity of a client,

**"appendix C business"** means -

(a) a financial services business supervised by the Commission,

(b) a prescribed business registered under these Regulations, or

(c) a business -

(i) which is carried on from a country or territory listed in Appendix C to the Handbook and which would, if it were carried on in the Bailiwick, be -

(A) a financial services business, or

(B) a prescribed business,

(ii) which may only be carried on in that country or territory by a person regulated for that purpose under the law of that country or territory,

(iii) the conduct of which is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are

consistent with those in the Financial Action Task Force Recommendations on Money Laundering in respect of such a business, and

- (iv) the conduct of which is supervised for compliance with the requirements referred to in subparagraph (iii), by an overseas regulatory authority,

**"Bailiwick"** means the Bailiwick of Guernsey,

**"beneficial owner"** means, in relation to a business relationship or occasional transaction -

- (a) the natural person who ultimately owns or controls the client, and
- (b) a person on whose behalf the business relationship or occasional transaction is to be or is being conducted and, in the case of a trust or other legal arrangement, this shall mean -
  - (i) any beneficiary in whom an interest has vested, and
  - (ii) any other person who appears likely to benefit from that trust or other legal arrangement,

**"board"** means -

- (a) the board of directors of a prescribed business, where it

is a body corporate, or

- (b) the senior management of a prescribed business, where it is not a body corporate,

**"business relationship"** means a continuing arrangement between the prescribed business in question and another party, to facilitate the carrying out of transactions, in the course of such prescribed business -

- (a) on a frequent, habitual, or regular basis, and
- (b) where the monetary value of any transactions to be carried out in the course of the arrangement is not known on entering into the arrangement,

**"business risk assessment"** means an assessment which documents the exposure of a business to money laundering and terrorist financing risks, and vulnerabilities, taking into account its -

- (a) size, nature and complexity, and
- (b) clients, products and services and the ways in which it provides those services,

**"the Commission"** means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>f</sup>,

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<sup>f</sup> Ordres en Conseil Vol. XXX, p. 243, Orders in Council No. XX of 1991, No. XIII of 1994, No. II of 1997, No. II of 1998 and Nos. XVII and XXI of 2002, No. XXII of 2003 and Ordinance No. XXXIV of 2005.

**"client"** means a person or legal arrangement -

- (a) who is seeking to establish or has established, a business relationship with a prescribed business, or
- (b) who is seeking to carry out, or has carried out, an occasional transaction with a prescribed business,

except that where such a person or legal arrangement is an introducer, the client is the person or legal arrangement on whose behalf the introducer is seeking to establish or has established the business relationship and provided that in the case of the prescribed business of estate agency, a client also includes a person or legal arrangement who wishes to acquire an interest in, or in respect of, real property,

**"client due diligence"** means the steps which a prescribed business is required to carry out pursuant to regulation 4(3),

**"client due diligence information"** means -

- (a) identification data, and
- (b) any account, files and correspondence relating to the business relationship or occasional transaction,

**"Disclosure Law"** means the Disclosure (Bailiwick of Guernsey) Law, 2007,

**"document"** includes information recorded in any form (including, without limitation, in electronic form),

**"employee"** means an individual working, including on a temporary basis, for a prescribed business whether under a contract of employment, a contract for services or otherwise,

**"enactment"** includes a Law, an Ordinance or any subordinate legislation and any provision or portion of a Law, an Ordinance or any subordinate legislation,

**"enhanced client due diligence"** shall be construed in accordance with regulation 5(2)(a),

**"Financial Action Task Force Recommendations on Money Laundering"** means the Financial Action Task Force Recommendations on Money Laundering and the Financial Action Task Force Special Recommendations on Terrorist Financing as revised or reissued from time to time,

**"Financial Intelligence Service"** means the service, known by that title, comprising those police officers assigned to the service for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures which are more commonly known, or referred to, as suspicious transaction reports,

**"Handbook"** means the Handbook for Prescribed Businesses on Countering Financial Crime and Terrorist Financing as revised or re-issued from time to time by the Commission,

**"high risk relationship"** means a business relationship or an occasional transaction which has a high risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

**"identification data"** means documents which are from a reliable and independent source,

**"introducer"** means a financial services business or prescribed business which is seeking to establish or has established, on behalf of another person or legal arrangement who is its customer or client, a business relationship with a prescribed business,

**"the Law"** means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

**"legal arrangement"** means an express trust or any other vehicle whatsoever which has a similar legal effect,

**"low risk relationship"** means a business relationship or an occasional transaction which has a low risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

**"minimum retention period"** means-

- (a) in the case of any client due diligence information -
  - (i) a period of five years starting from the date-
    - (A) where the client has established a business relationship with the prescribed business, that relationship ceased,
    - (B) where the client has carried out an occasional transaction with the



prescribed business, that transaction was completed, or

(ii) such other longer period as the Commission may direct,

(b) in the case of a transaction document -

(i) a period of five years starting from the date that both the transaction and any related transaction were completed, or

(ii) such other longer period as the Commission may direct,

**"money laundering"** is any act which -

(a) constitutes an offence under section 38, 39 or 40 of the Law,

(b) constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>g</sup>,

(c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),

(d) constitutes aiding, abetting, counselling or procuring

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<sup>g</sup> Order in Council No. VII of 2000 as amended by Order in Council No. II of 2005.

the commission of an offence specified in paragraph (a) or (b), or

- (e) would constitute an offence specified in paragraph (a), (b), (c) or (d) if done in the Bailiwick,

irrespective of the value of the property involved and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it,

**"money laundering reporting officer"** means a manager, partner or director -

- (a) appointed by a prescribed business to have responsibility for compliance with policies, procedures and controls to forestall, prevent and detect money laundering and terrorist financing, and
- (b) nominated by a prescribed business to receive disclosures under Part I of the Disclosure Law and section 12 of the Terrorism Law,

**"notify"** means notify in writing,

**"occasional transaction"** means any transaction involving more than £10,000, carried out by the prescribed business in question in the course of that business, where no business relationship has been proposed or established and includes such transactions carried out in a single operation or two or more operations that appear to be linked,

**"overseas regulatory authority"** means any body or authority which

appears to the Commission to carry out, in a country or territory outside the Bailiwick, functions corresponding to those carried out by the Commission,

**"police officer"** has the meaning in section 51(1) of the Law,

**"politically exposed person"** shall be construed in accordance with regulation 5(2)(b),

**"prescribed business"** means any business which is a relevant business for the purposes of the Law, but does not include a business of a type described in paragraphs 2 or 4 of Schedule 2 to the Law,

**"registered prescribed business"** means a prescribed business which is registered under Part IV,

**"relevant employees"** means any -

- (a) member of the board,
- (b) member of the management of the prescribed business,  
and
- (c) employees whose duties relate to the prescribed business,

**"relevant enactments"** means -

- (a) the Money Laundering (Disclosure of Information)

- (Guernsey) Law, 1995<sup>h</sup>,
- (b) the Money Laundering (Disclosure of Information) (Alderney) Law, 1998<sup>i</sup>,
  - (c) the Law,
  - (d) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
  - (e) the Money Laundering (Disclosure of Information) (Sark) Law, 2001<sup>j</sup>,
  - (f) the Terrorism (United Nations Measures) (Channel Islands) Order 2001<sup>k</sup>,
  - (g) the Al-Qaida and Taliban (United Nations Measures) (Channel Islands) Order 2002<sup>l</sup>,
  - (h) the Terrorism Law,
  - (i) the Disclosure Law,

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<sup>h</sup> Order in Council No. IV of 1995.

<sup>i</sup> Order in Council No. VII of 1998.

<sup>j</sup> Order in Council No. XXXII of 2001.

<sup>k</sup> S.I. 2001/3363 (registered on 11<sup>th</sup> October 2001) as amended by U.K. S.I. 2002/258 and the British Overseas Territories Act, s.2(3) an Act of Parliament.

- (j) the Disclosure (Bailiwick of Guernsey) Regulations, 2007<sup>m</sup>,
- (k) the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007<sup>n</sup>,
- (l) the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2008<sup>o</sup>,
- (m) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,

and such other enactments relating to money laundering and terrorist financing as may be enacted or made from time to time in respect of the Bailiwick or any part thereof,

**"risk"** means a risk of money laundering or terrorist financing occurring and **"risk assessment"** shall be construed accordingly,

**"subordinate legislation"** means any ordinance, statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

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<sup>l</sup> S.I. 2002/258 (registered on 18<sup>th</sup> February 2002) as amended by the British Overseas Territories Act 2002, s.2(3) an Act of Parliament.

<sup>m</sup> G.S.I. 2007 No. 34.

<sup>n</sup> G.S.I. 2007 No. 36.

**"Terrorism Law"** means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

**"terrorist financing"** means doing any act which -

- (a) constitutes an offence under section 8, 9, 10 or 11 of the Terrorism Law and, for the purposes of this definition, the "purposes of terrorism" shall include, to the extent that they do not already do so -
  - (i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1 of the Terrorism Law, or
  - (ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,
- (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
- (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
- (d) would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b) or (c) if done in the Bailiwick,

irrespective of the value of the property involved, and for the purposes of this

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<sup>o</sup>

G.S.I. 2007 No. 33

definition having possession of any property shall be taken to be doing an act in relation to it,

**"transaction document"** means a document which is a record of a transaction carried out by a prescribed business with a client or an introducer,

**"underlying principal"** means, in relation to a business relationship or occasional transaction, any person who is not a beneficial owner but who-

- (a) is a settlor, trustee or a protector of a trust which is the customer, or client, or the beneficiaries of which are the beneficial owners, or
- (b) exercises ultimate effective control over the customer or client or exercises or is to exercise such control over the business relationship or occasional transaction,

and in this definition **"protector"** has the meaning in section 58 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>P</sup>,

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>Q</sup>,

and other expressions have the same meanings as in the Law.

- (2) A reference to an enactment is to that enactment as from time

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<sup>P</sup> Order in Council No. I of 2001, amended by No. XIV of 2003.

<sup>Q</sup> Ordres en Conseil Vol. XXXI, p. 278; Ordinance No. XXIX of 2006.

to time amended, repealed and replaced, extended or applied by or under any other enactment.

(3) In these Regulations, unless the context requires otherwise words and expressions importing the neuter gender include the masculine and the feminine.

(4) The Interpretation (Guernsey) Law, 1948<sup>r</sup> applies to the interpretation of these Regulations.

Dated this        day of        , 2008

L S TROTT

Chief Minister

For and on behalf of the Policy Council

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<sup>r</sup> Ordres en Conseil Vol. XIII, p. 355.



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations impose requirements on prescribed businesses for the purpose of forestalling and preventing money laundering and terrorist financing. Prescribed businesses are businesses undertaken by lawyers, accountants and estate agents.

They contain new obligations relating to carrying out risk assessments in relation to a prescribed business as a whole and each business relationship it has with a client (regulation 3), more precise requirements relating to the identification of persons on whose behalf transactions are carried out or who have effective control over clients (regulation 4), the timing of client due diligence (regulation 7), provisions relating to the maintenance of client accounts (regulation 8), the monitoring of business relationships (regulation 11) and ensuring compliance and corporate responsibility for compliance (regulation 15).

Part I of the Regulations contains the requirements relating to risk assessment, Part II the requirements relating to client due diligence including where enhanced due diligence must be carried out or where reduced or simplified due diligence may be carried out. Part III contains the requirements on prescribed businesses to ensure their compliance with the Regulations, on record keeping and on internal reporting of suspicious transactions and employee training. Part IV provides for registration with the Commission of all prescribed businesses and for the payment of a registration fee and annual fees designed to cover the Commission's administrative costs. Part V extends certain provisions of the Criminal Justice (Proceeds of Crime) Law, 1999, as amended, to prescribed businesses. It also deals with offences and penalties, limitation of the Commission's liability and interpretation.

A Court must take into account rules and guidance contained in the Guernsey Financial Services Commission's Handbook for Prescribed Businesses on Countering

Financial Crime and Terrorist Financing in determining whether a prescribed business has complied with these Regulations.