

GUERNSEY STATUTORY INSTRUMENT

2010 No

**The Criminal Justice (Proceeds of Crime) (Financial
Services Businesses) (Bailiwick of Guernsey) (Amendment)
(No. 2) Regulations, 2010**

<i>Made</i>	21 st June, 2010
<i>Coming into operation</i>	21 st June, 2010
<i>Laid before the States</i>	2010

THE POLICY COUNCIL, in exercise of the powers conferred on it by sections 49 and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^a hereby makes the following Regulations -

Amendment of regulation 6.

1. In regulation 6(3) for "simplified or reduced customer due diligence shall not be applied" substitute, "the discretion in paragraph (1) shall not be exercised".

Amendment of regulation 10.

2. In regulation 10 -

^a Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005 and No. XV of 2007; Recueil d'Ordonnances Tome XXVIII, p. 266; Tome XXIX, pp. 112 and 406; Tome XXXII, p. 666; Ordinance No. XXXVII of 2008; G.S.I. No. 27 of 2002; G.S.I. No. 33 of 2007 and G.S.I. No. 48 of 2008 and certain sections of the Law are modified in their application to external confiscation orders by Recueil d'Ordonnances Tome XXVIII, p. 274.

(a) in paragraph (1)(b) the phrase ", subject to limited exceptions provided for in chapter 4 of the Handbook," is revoked,

(b) for paragraph (2) substitute -

"(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 of, or a member of the same group of bodies corporate as, the financial services business with which it is entering into the business relationship ("**receiving financial services business**"), and

(i) the ultimate parent body corporate of the group of bodies corporate of which both the introducer and the receiving financial services business are members, falls within paragraph (2)(a),

(ii) the conduct of the introducer 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

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

Amendment of regulation 14.

3. For regulation 14(4)(b) substitute –

"(b) must be made available promptly -

- (i) to an auditor, and
- (ii) to any police officer, the Financial Intelligence Service, the Commission or any other person, where such documents or customer due diligence information are requested pursuant to these Regulations or any relevant enactment."

Amendment of regulation 15.

4. (1) Renumber regulation 15 as regulation 15(1).
- (2) In regulation 15(1)(d) (as renumbered under paragraph (1)) -
- (a) immediately before "ensure" insert, "subject to paragraph (2)", and

- (b) for the words for "to the extent that the law of that country or territory allows" to the end of the regulation, substitute -

"provided that, where requirements under subparagraphs (i) and (ii) differ, a financial services business must ensure that the requirement which provides the highest standard of compliance, by reference to the Financial Action Task Force Recommendations on Money Laundering, is complied with".

- (3) After regulation 15(1) (as renumbered under paragraph (1)) insert the following paragraph –

"(2) The obligation under paragraph (1)(d) applies to the extent that the law of the relevant country or territory allows and if the law of that country or territory does not so allow in relation to any requirement of these Regulations, the financial services business must notify the Commission accordingly."

Insertion of Part IIIB.

5. Immediately after Part IIIA of the Principal Regulations, insert the following Part -

"PART IIIB
DESIGNATION OF SUPERVISORY AUTHORITY

Guernsey Financial Services Commission.

- 15F.** (1) The Commission is prescribed as the supervisory authority with responsibility for monitoring and enforcing compliance by

financial services businesses with regulations and other measures made or issued under the Law, or any other enactment, for the purpose of forestalling, preventing or detecting money laundering and terrorist financing.

(2) The Commission is also designated as the competent authority -

(a) to register financial service businesses under Part IIIA, and

(b) to register financial businesses under section 2 of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.

(3) For the purpose of paragraph (1), "measures" includes rules, guidance, instructions, notices and other similar instruments."

Amendment of regulation 19(1) of the Principal Regulations.

6. In regulation 19(1) -

(a) for the definition of "**Financial Intelligence Service**", substitute -

""**Financial Intelligence Service**" means the division of the Financial Investigation Unit, comprising those police officers and other persons assigned to the division 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 or suspicious activity reports,"

- (b) immediately after the definition of "**Financial Intelligence Service**", as substituted by subparagraph (a), insert -

""**Financial Investigation Unit**" means that branch of the Customs and Immigration Service responsible for the investigation of financial and economic crime," and

- (c) subparagraphs (a), (b) and (e) of the definition of "**relevant enactments**" are revoked."

Interpretation.

7. (1) In these Regulations -

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

"**the Principal Regulations**" means the The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007^b.

- (2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of these Regulations.

- (3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

^b G.S.I. No. 33 of 2007; amended by Order in Council No. XV of 2008; G.S.I. No. 30 of 2009 and G.S.I. No. 13 of 2010.

^c Ordres en Conseil Vol. XIII, p. 355.

Citation.

8. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2010.

Commencement.

9. (1) Other than regulation 2(b), these Regulations come into force on the 21st June 2010.

(2) Regulation 2(b) comes into force on the 30th July 2010.

Dated this 21st day of June, 2010

L. S. TROTT

Chief Minister

For and on behalf of the Policy Council

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 ("the 2007 Regulations").

Regulations 1 to 4 make amendments to regulations 6, 10, 14 and 15 respectively of the 2007 Regulations. The amendments refine obligations upon

financial services businesses under the 2007 Regulations concerning the measures they must put in place and the actions they must take for the purposes of forestalling, preventing or detecting money laundering and terrorist financing.

Regulation 5 inserts a new provision (Part IIIB, regulation 15F) into the 2007 Regulations designating the Guernsey Financial Services Commission as supervisory authority with responsibility for monitoring and enforcing compliance by financial services businesses with regulations and other measures made or issued under the Criminal Justice (Proceeds of Crime) Law, 1999, or any other enactment, for the purpose of forestalling, preventing or detecting money laundering and terrorist financing. The inserted Part also designates the Commission as the competent authority to register financial service businesses under Part IIIA of the 2007 Regulations and under section 2 of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.

Regulation 6 amends the definitions of "Financial Intelligence Service" and "relevant enactments" by, in the latter case, revoking the references to the Money Laundering (Disclosure of Information) (Guernsey) Law, 1995, the Money Laundering (Disclosure of Information) (Alderney) Law, 1998 and the Money Laundering (Disclosure of Information) (Sark) Law, 2001 all of which were repealed on 28th April, 2010 by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010.

With the exception of regulation 2(b), these Regulations come into force on 21st June 2010. Regulation 2(b) (which amends regulation 10 of the 2007 Regulations dealing with introducers of business) comes into force on 30th July 2010.