

PROJET DE LOI

ENTITLED

The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011

ARRANGEMENT OF SECTIONS

PART I DESIGNATIONS

1. Meaning of "designated person".
2. Interim designation.
3. Duration of interim designation.
4. Power to make final designation.
5. Duration and renewal of final designation.
6. Notification of designation.
7. Variation or revocation of designation.
8. Confidential information.

PART II PROHIBITIONS IN RELATION TO DESIGNATED PERSONS

9. Freezing of funds and economic resources.
10. Making funds or financial services available to designated persons.
11. Making funds or financial services available for benefit of designated persons.
12. Making economic resources available to designated persons.
13. Making economic resources available for benefit of designated persons.
14. Exceptions.
15. Licences.
16. Circumventing prohibitions etc.

PART III INFORMATION

17. Reporting obligations of relevant institutions.
18. Powers to require information.

19. Production of documents.
20. Failure to comply with requirement for information.
21. General power to disclose information.
22. Co-operation with investigations.
23. Application of provisions.

PART IV SUPPLEMENTARY PROVISIONS

24. Appeals.
25. Special Court Procedures.

PART V OFFENCES

26. Penalties.
27. Extra-territorial application of offences.
28. Offences by bodies corporate etc.
29. Jurisdiction to try offences.

PART VI INTERPRETATION

30. Meaning of "funds" and "economic resources".
31. Meaning of "financial services".
32. Meaning of "relevant institution".
33. Interpretation: general.

PART VII MISCELLANEOUS

34. Service of notices.
35. Delegation.
36. Consequential amendments.
37. Power to give effect by Ordinance.
38. General provisions as to Ordinances and orders.
39. Citation and commencement.

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THE STATES, in pursuance of their Resolution of the 30th March, 2011^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

DESIGNATIONS

Meaning of "designated person".

1. In this Law, "**designated person**" means -
 - (a) a person who is the subject of a designation under this Law,
 - (b) a person who is the subject of a designation under and within the meaning of the Terrorist Asset-Freezing etc. Act 2010^b, or
 - (c) a natural or legal person, group or entity included in the list provided for by Article 2(3) of Council

^a Article V of Billet d'État No. IV of 2011.

^b An Act of Parliament (2010 c.38).

Regulation (EC) No 2580/2001 of the 27th December 2001^c on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (as that Regulation is amended from time to time).

Interim designation.

2. (1) The Policy Council may make an interim designation of a person if -

- (a) the Policy Council reasonably suspects -
 - (i) that the person is or has been involved in terrorist activity,
 - (ii) that the person is owned or controlled directly or indirectly by a person within subparagraph (i), or
 - (iii) that the person is acting on behalf of or at the direction of a person within subparagraph (i), and
- (b) the Policy Council considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.

^c OJ L 344, 28.12.2001, p. 70.

(2) Sections 4(2) to (4) apply for the purposes of this section as they apply for the purposes of Section 4.

(3) The Policy Council may not make more than one interim designation of the same person in relation to the same, or substantially the same, evidence.

(4) Nothing in this section prevents the making of a final designation in accordance with section 4 of a person who has been the subject of an interim designation.

Duration of interim designation.

3. (1) An interim designation of a person -

- (a) is of no effect during any period when the person is a designated person under section 1(b) or (c), and
- (b) expires at the end of the 30 days beginning with the day on which it was made, or when a final designation of the person is made, whichever is earlier.

(2) Where an interim designation expires the Policy Council must -

- (a) give written notice of the expiry to the designated person, and
- (b) take reasonable steps to bring the expiry to the attention of the persons who were informed of the designation.

(3) Where an interim designation expires on the making of a final designation in relation to the same person -

- (a) a notice under subsection (2) may be combined with written notice under section 6 of the final designation, and
- (b) steps under subsection (2) may be combined with steps under section 6 to publicize the final designation.

Power to make final designation.

4. (1) The Policy Council may make a final designation of a person if -

- (a) the Policy Council believes -
 - (i) that the person is or has been involved in terrorist activity,
 - (ii) that the person is owned or controlled directly or indirectly by a person within subparagraph (i), or
 - (iii) that the person is acting on behalf of or at the direction of a person within subparagraph (i), and
- (b) the Policy Council considers that it is necessary for purposes connected with protecting members of the

public from terrorism that financial restrictions should be applied in relation to the person.

(2) For the purposes of this section, involvement in terrorist activity is any one or more of the following -

- (a) the commission, preparation or instigation of acts of terrorism,
- (b) conduct that facilitates the commission, preparation or instigation of such acts, or that is intended to do so, and
- (c) conduct that gives support or assistance to persons who are known or believed by the person giving the support or assistance to be involved in conduct falling within paragraph (a) or (b).

(3) For the purposes of this section, it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.

(4) The reference in subsection (1)(b) to financial restrictions includes a reference to restrictions relating to economic resources.

Duration and renewal of final designation.

5. (1) A final designation of a person -

- (a) is of no effect during any period when the person is a designated person under section 1(b) or (c), and

(b) expires 12 months after it was made, unless it is renewed.

(2) The Policy Council may renew a final designation of a person at any time before it expires, if the requirements for final designation under section 4 are met in respect of the person at the time of the renewal.

(3) A final designation so renewed expires 12 months after it was renewed (or last renewed), unless it is renewed again.

(4) Section 6 applies to the renewal under this section of a final designation in the same way as it applies to a final designation under section 4.

(5) Where a final designation expires the Policy Council must -

(a) give written notice of the expiry to the designated person, and

(b) take reasonable steps to bring the expiry to the attention of the persons who were informed of the designation.

(6) Nothing in this section prevents the Policy Council from designating a person more than once under section 4.

Notification of designation.

6. (1) Where the Policy Council makes a designation of a person, the Policy Council must -

- (a) give written notice of the designation to the person,
and
- (b) take steps to publicize the designation.

(2) Unless one or more of the following conditions is satisfied, the Policy Council must take steps to publicize the designation generally -

- (a) the Policy Council believes that the designated person is an individual under the age of 18,
- (b) the Policy Council considers that disclosure of the designation should be restricted -
 - (i) in the interests of the security of the Bailiwick or of any other country or territory,
 - (ii) for reasons connected with the prevention or detection of serious crime, or
 - (iii) in the interests of justice.

(3) If one or more of those conditions is satisfied, the Policy Council must inform only such persons of the designation as the Policy Council considers appropriate.

(4) If one or more of the conditions referred to in subsection (2) is satisfied in respect of a designation, but later none of the conditions referred to in subsection (2) is satisfied in respect of the designation, and the designation is still in effect, the Policy Council must -

- (a) give written notice of that fact to the designated person, and
- (b) take steps to publicize the designation generally.

Variation or revocation of designation.

7. (1) The Policy Council may at any time vary or revoke a designation.

(2) Where the Policy Council varies or revokes a designation of a person, the Policy Council must -

- (a) give written notice of the variation or revocation to the person, and
- (b) take reasonable steps to bring the variation or revocation to the attention of the persons who were informed of the designation under section 6.

(3) If the Policy Council refuses an application by a person for the variation or revocation of the person's designation by the Policy Council, the Policy Council must give written notice of the refusal to the person.

Confidential information.

8. (1) Where the Policy Council in accordance with section 6(3) informs only certain persons of the designation of a person, the Policy Council may specify that the information conveyed in so informing those people is to be treated as confidential.

(2) A person who -

- (a) is provided with information that is so specified as to be treated as confidential, or
- (b) obtains such information,

must not disclose it if the person knows, or has reasonable cause to suspect, that the information has been specified under subsection (1) as information to be treated as confidential.

(3) Subsection (2) does not apply to any disclosure made by the person if that disclosure is made with lawful authority.

(4) For the purposes of subsection (3), information is disclosed with lawful authority only if and to the extent that -

- (a) the disclosure is made by the Policy Council or authorized by the Policy Council,
- (b) the disclosure is made by the designated person or made with the consent of the designated person,
- (c) the disclosure is necessary to give effect to a requirement imposed under or by virtue of this Law or any other enactment, or
- (d) the disclosure is required by any direction or order of the Royal Court.

(5) This section does not prevent the disclosure of information that is already, or has previously been, available to the public from other sources.

(6) A person who contravenes subsection (2) commits an offence.

(7) The Royal Court may -

(a) on the application of the designated person who is the subject of the information, or

(b) on the application of Her Majesty's Procureur,

grant an injunction to prevent a breach of subsection (2).

PART II

PROHIBITIONS IN RELATION TO DESIGNATED PERSONS

Freezing of funds and economic resources.

9. (1) A person ("P") must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) In subsection (1) "**deal with**" means -

(a) in relation to funds -

(i) use, alter, move, allow access to, or transfer, the funds,

- (ii) deal with the funds in any other way that would result in any change in their volume, amount, location, ownership, possession, character or destination, or
 - (iii) make any other change that would enable use of the funds, including by way of, or in the course of, portfolio management, or
- (b) in relation to economic resources, exchange, or use in exchange, for funds, goods or services.
- (3) A person who contravenes subsection (1) commits an offence.

Making funds or financial services available to designated person.

10. (1) A person ("P") must not make funds or financial services available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.

- (2) A person who contravenes subsection (1) commits an offence.

Making funds or financial services available for benefit of designated person.

11. (1) A person ("P") must not make funds or financial services available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.

- (2) For the purposes of subsection (1) -

- (a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
 - (b) "**financial benefit**" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) A person who contravenes subsection (1) commits an offence.

Making economic resources available to designated person.

12. (1) A person ("P") must not make economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect -

- (a) that P is making the economic resources so available, and
 - (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.
- (2) A person who contravenes subsection (1) commits an offence.

Making economic resources available for benefit of designated person.

13. (1) A person ("P") must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.

- (2) For the purposes of subsection (1) -

- (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
 - (b) "**financial benefit**" includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) A person who contravenes subsection (1) commits an offence.

Exceptions.

14. (1) The prohibitions in sections 9 to 11 are not contravened by a relevant institution crediting a frozen account with -

- (a) interest or other earnings due on the account, or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) The prohibitions in sections 10 and 11 do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

(3) The prohibition in section 11 is not contravened by the making of a payment that -

- (a) is a benefit under or by virtue of a relevant enactment (irrespective of the name or nature of the benefit), and
- (b) is made to a person who is not a designated person,

whether or not the payment is made in respect of a designated person.

(4) A relevant institution must without delay inform the Policy Council if it credits a frozen account with a payment referred to in subsection (1)(b) or in the circumstances referred to in subsection (2).

(5) In this section -

"frozen account" means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person, and

"relevant enactment" includes the Social Insurance (Guernsey) Law, 1978^d, the Health Service (Benefit) (Guernsey) Law, 1990^e, the Long-term Care Insurance (Guernsey) Law, 2002^f and such other enactment as the States may by Ordinance prescribe.

^d Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59; Vol. XXIV, p. 510; Vol. XXXV(1), p. 164; Vol. XXXVI, pp. 123 and 343; Vol. XXXIX, p. 107; Vol. XL, p. 351; Order in Council No. IX of 2001; No. XXIII of 2002; No. XXIV of 2003; No. XI of 2004 and No. XVIII of 2007; Recueil d'Ordonnances Tome XXVI, p. 177 and Ordinance No. XLII of 2009.

^e Ordres en Conseil Vol. XXXII, p. 192; Recueil d'Ordonnances Tome XXVI, pp. 177, 483, and 495; Tome XXIX, pp. 182 and 305 and modified by Tome XXVI, pp. 484 and 491; Tome XXVII, p. 200; Tome XXVIII, p. 1; Tome XXIX, pp. 182, 196, 200, 210, 373 and 580; Tome XXXI, p. 628; Tome XXXII, p. 628.

^f Order in Council No. XXIII of 2002.

Licences.

15. (1) The prohibitions in sections 9 to 13 do not apply to anything done under the authority of a licence granted by the Policy Council under this section.

(2) The Policy Council may grant a licence in respect of a designated person.

(3) A licence granted under this section -

(a) must specify the acts authorized by it,

(b) may be general or granted to a category of persons or to a particular person,

(c) may be unconditional or subject to conditions, and

(d) may be unlimited or limited in duration.

(4) The Policy Council may at any time vary or revoke a licence granted under this section.

(5) On the grant, variation or revocation of a licence under this section, the Policy Council must -

(a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person, or

- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Policy Council considers appropriate to publicize the grant, variation or revocation of the licence.

(6) A person who, for the purpose of obtaining a licence under this section, knowingly or recklessly -

- (a) provides information that is false in a material respect, or
- (b) provides or produces a document that is not what it purports to be,

commits an offence.

(7) A person who purports to act under the authority of a licence granted under this section but fails to comply with any condition to which the licence is subject commits an offence.

Circumventing prohibitions etc.

16. (1) A person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly) -

- (a) to circumvent section 9(1), 10(1), 11(1), 12(1) or 13(1), or
- (b) to enable or facilitate the contravention of any of those provisions.

- (2) A person who contravenes subsection (1) commits an offence.

PART III
INFORMATION

Reporting obligations of relevant institutions.

17. (1) A relevant institution must inform the Policy Council as soon as practicable if -

- (a) it knows, or has reasonable cause to suspect, that a person -
 - (i) is a designated person, or
 - (ii) has committed an offence under any provision of Part II, and
- (b) the information or other matter on which the knowledge or reasonable cause for suspicion is based came to it in the course of carrying on its business.

(2) Where a relevant institution informs the Policy Council under subsection (1) it must state -

- (a) the information or other matter on which the institution's knowledge or reasonable cause for suspicion is based, and
- (b) any information that the institution holds about the person by which the person can be identified.

(3) Subsection (4) applies if -

- (a) a relevant institution informs the Policy Council under subsection (1) that it knows, or has reasonable cause to suspect, that a person is a designated person, and
- (b) that person is a customer of the institution.

(4) The relevant institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.

(5) A relevant institution that fails to comply with subsection (1) commits an offence.

Powers to require information.

18. (1) The Policy Council may require a designated person to provide information concerning -

- (a) funds or economic resources owned, held or controlled by, or on behalf of, the designated person, or
- (b) any disposal of such funds or economic resources.

(2) The Policy Council may require a designated person to provide such information as the Policy Council may reasonably require about expenditure -

(a) by or on behalf of the designated person, or

(b) for the benefit of the designated person.

(3) The power in subsection (1) or (2) is exercisable only where the Policy Council believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Law.

(4) The Policy Council may require a person acting under a licence granted under section 15 to provide information concerning -

(a) funds or economic resources dealt with under the licence, or

(b) funds, economic resources or financial services made available under the licence.

(5) The Policy Council may require any person in or resident in the Bailiwick to provide such information as the Policy Council may reasonably require for the purpose of -

(a) establishing for the purposes of this Law -

(i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person,

(ii) the nature and amount or quantity of any funds, economic resources or financial services made

available directly or indirectly to, or for the benefit of, a designated person, or

(iii) the nature of any financial transactions entered into by a designated person,

(b) monitoring compliance with or detecting evasion of this Law, or

(c) obtaining evidence of the commission of an offence under this Law.

(6) The Policy Council may specify the manner in which, and the period within which, information is to be provided, being information that the Policy Council requires to be provided under this section.

(7) If no such period is specified, the information so required to be provided must be provided within a reasonable time.

(8) A requirement under this section may impose a continuing obligation to keep the Policy Council informed –

(a) as circumstances change, or

(b) on such regular basis as the Policy Council may specify.

(9) Information required to be provided under this section may relate to any period during which a person is, or was, a designated person.

(10) Information referred to in subsection (1)(b), (2) or (5)(a)(iii) may relate to any period before the person became a designated person (as well as, or instead of, any period of time).

Production of documents.

19. (1) A requirement under section 18 may include a requirement to produce specified documents or documents of a specified description.

(2) Where the Policy Council requires under section 18 that one or more documents be produced, the Policy Council may -

(a) take copies of or extracts from any document so produced,

(b) require any person so producing a document to give an explanation of the document, and

(c) where a person so producing a document is a partnership, association or body corporate, require a person who is -

(i) in the case of a partnership, a present or past partner or employee of the partnership,

(ii) in any other case, a present or past officer or employee of the association or body corporate,

to give an explanation of the document.

(3) Where the Policy Council requires under section 18 a designated person, or a person acting under a licence granted under section 15, to produce one or more documents, the person must –

- (a) take reasonable steps to obtain the documents (if not already in the person's possession or control), and
- (b) keep the documents under the person's possession or control (except for the purpose of providing them to the Policy Council or as the Policy Council may otherwise permit).

Failure to comply with requirement for information.

20. (1) A person commits an offence who -

- (a) without reasonable excuse refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with a requirement made under this Part,
- (b) knowingly or recklessly gives any information, or produces any document, that is false in a material particular in response to such a requirement,
- (c) with intent to evade the provisions of this Part, destroys, mutilates, defaces, conceals or removes a document, or

- (d) otherwise intentionally obstructs the Policy Council in the exercise of the Policy Council's powers under this Part.

(2) Where a person is convicted of an offence under this section, the court may make an order requiring the person, within such period as may be specified in the order, to comply with the relevant requirement in accordance with the order, or to do such other thing relating to the requirement as the court orders.

General power to disclose information

21. (1) The Policy Council may disclose any information obtained by it in exercise of its powers under this Part (including any document so obtained and any copy or extract made of any document so obtained) -

- (a) to Her Majesty's Procureur,
- (b) to a police officer,
- (c) to a person holding or acting in any office under or in the service of -
 - (i) the Crown in right of Her Majesty's Government of the United Kingdom,
 - (ii) the Crown in right of the Scottish Administration, the Northern Ireland Administration or the Welsh Assembly Government,

- (iii) the States, the States of Alderney or the Chief Pleas of Sark,
 - (iv) the States of Jersey
 - (v) the Government of the Isle of Man, or
 - (vi) the Government of any British overseas territory,
- (d) to any law officer of the Crown for Jersey or the Isle of Man,
- (e) to the Office of the Legal Aid Administrator, the Legal Services Commission of the United Kingdom, the Scottish Legal Aid Board and the Northern Ireland Legal Services Commission,
- (f) to the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^g, the Financial Services Authority of the United Kingdom, the Jersey Financial Services Commission, the Isle of Man Insurance and Pensions Authority and the Isle of Man Financial Supervision Commission,

^g Ordres en Conseil Vol. XXX, p. 243.

- (g) for the purpose of giving assistance or co-operation, pursuant to the relevant Security Council resolutions, to -
 - (i) any organ of the United Nations, or
 - (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country or territory,
- (h) with a view to instituting, or otherwise for the purposes of, any proceedings -
 - (i) in the Bailiwick, for an offence under this Law,
 - (ii) in the United Kingdom, for an offence under the Terrorist Asset-Freezing etc. Act 2010, or
 - (iii) in Jersey, in the Isle of Man or in any British overseas territory, for an offence under a similar provision in any such jurisdiction, or
- (j) with the consent of a person who, in his or her own right, is entitled to the information or to possession of the document, copy or extract, to a third party.

(2) In subsection (1)(j) "**in his or her own right**" means not merely in the capacity as a servant or agent of another person.

Co-operation with investigations.

22. (1) Her Majesty's Procureur must take such steps as he considers appropriate to co-operate with an investigation relating to the funds, economic resources or financial transactions of a designated person.

(2) The Policy Council must take such steps as it considers appropriate to co-operate with an investigation relating to the funds, economic resources or financial transactions of a designated person.

(3) Subsections (1) and (2) apply whether the investigation takes place in the Bailiwick or elsewhere.

Application of provisions.

23. (1) Nothing done in accordance with this Part is to be treated as a breach of any restriction imposed by contract, enactment or otherwise.

(2) However, nothing in this Part authorizes a disclosure that -

(a) contravenes the Data Protection (Bailiwick of Guernsey) Law, 2001^h, or

(b) is prohibited by Part I of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003ⁱ.

^h Order in Council No. V of 2002 as modified by Ordinance No. XXIV of 2004 and No. 2 of 2010; the European Communities (Implementation of Council Directive on Privacy and Electronic Communications) (Sark) Ordinance, 2004 and G.S.I. Nos.14, 15, 16 and 24 of 2002.

(3) Nothing in this Part is to be read as requiring a person ("P") who has acted for another person in the capacity of advocate, counsel or solicitor, or otherwise in the capacity of lawyer, to disclose any privileged information that is in P's possession in that capacity.

(4) This Part does not limit the circumstances in which information may be disclosed otherwise than by virtue of this Part.

(5) This Part does not limit the powers of the Policy Council to impose conditions in connection with the performance of the Policy Council's functions under section 15.

(6) In this section -

"information" includes documents, and

"privileged information" means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

ⁱ Order in Council No. XXX of 2003; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Regulation of Investigatory Powers (Applicable Public Authorities) Regulations, 2004 (G.S.I. No. 26 of 2004). The Law is modified by the Regulation of Investigatory Powers (British Broadcasting Corporation) Regulations, 2004 (G.S.I. No. 25 of 2004).

PART IV
SUPPLEMENTARY PROVISIONS

Appeals.

24. (1) This section applies to any decision of the Policy Council taken in the performance of, or in connection with, its functions under this Law including, for the avoidance of doubt, any decision -

- (a) to make or vary an interim or final designation of a person,
- (b) to renew a final designation of a person, or
- (c) not to vary or revoke an interim or final designation of a person.

(2) A person aggrieved by a decision to which this section applies may appeal to the Royal Court against that decision on the grounds 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 section shall be instituted -

(a) within 28 days of the date on which notice in writing of the decision was served by the Policy Council on the person to whom the decision relates, or such later date as the Royal Court may for good cause allow, and

(b) by a summons served on the Policy Council stating the grounds, and setting out the material facts, on which the appellant relies.

(4) If an appeal under this section has not been determined by the Royal Court within three months of the date of the summons by which it was instituted, the Policy Council may apply to the Royal Court, by a summons served on the appellant, to show cause why the appeal should not be dismissed for want of prosecution; and upon the making of such an application the Royal Court may dismiss the appeal or make such other order as it considers just.

(5) On an appeal under this section the Court may -

(a) set the decision of the Policy Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council with such directions as the Court thinks fit, or

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

(6) A decision of the Royal Court under this section shall be final as to any question of fact, but an appeal from such a decision shall lie to the Court of Appeal on any question of law within such period and in such manner as may be prescribed by Order of the Royal Court.

(7) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.

Special Court Procedures.

25. (1) The States may by Ordinance provide for special court procedures to be followed in any proceedings -

- (a) under this Law,
- (b) under any other enactment concerning the freezing of assets, or
- (c) under other measures giving effect to international sanctions.

(2) An Ordinance under subsection (1) may, without limitation, make provision in relation to the following matters -

- (a) the mode of proof and evidence in the proceedings,
- (b) the disclosure of evidence and any other matter relating to the proceedings,
- (c) the determination of the proceedings, or any issue in the proceedings, including determination -

- (i) without a hearing,
 - (ii) without the provision to any party to the proceedings (or to the legal representative of any such party) of full particulars of the reasons for any decision relating to the proceedings or issue, and
 - (iii) in the absence of any person, including any party to the proceedings (or the legal representative of any such party),
- (d) legal representation in the proceedings,
 - (e) rights of audience in the proceedings,
 - (f) the establishment of a tribunal or other body with powers to determine the proceedings, and
 - (g) the authorisation of, and conferring of functions on, any court, tribunal or other body in order to enable any such court, tribunal or body to determine the proceedings or any issue in the proceedings.

(3) The Royal Court must be consulted in connection with any Ordinance made under this section.

PART V OFFENCES

Penalties.

26. (1) A person guilty of an offence under section 9(3), 10(2), 11(3), 12(2), 13(3), or 16(2) is liable –

(a) an conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 4 on the uniform scale or to both.

(2) A person guilty of an offence under section 8(6) or 15(6) or (7) is liable –

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 4 on the uniform scale or to both.

(3) A person guilty of an offence under section 17(5) or 20(1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 4 on the uniform scale or to both.

Extra-territorial application of offences.

27. (1) An offence under this Law may be committed by conduct wholly or partly outside the Bailiwick by -

- (a) a UK national who is ordinarily resident in the Bailiwick, or
- (b) a body incorporated or constituted under the law of the Bailiwick or any part thereof.

(2) In subsection (1) "**UK national**" means -

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen all within the meaning of the British Nationality Act 1981^j,
- (b) a person who under that Act is a British subject, or
- (c) a British protected person within the meaning of that Act.

(3) In this section "**conduct**" includes acts and omissions.

(4) Nothing in this section affects any criminal liability arising otherwise than under this section.

^j An Act of Parliament (1981 c.61).

Offences by bodies corporate, etc.

28. (1) Where an offence under this Law is committed by a body corporate or by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to or to have been facilitated by any neglect on the part of, any director, manager, member of any committee of management or other controlling authority, secretary or other similar officer or partner of the body, or any person purporting to act in any such capacity, he as well as the 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 his functions of management as if he were a director.

(3) Proceedings for an offence alleged to have been committed under this Law by an unincorporated body shall be brought in the name of that body and not in the name of any of its members, and a fine imposed on the body on its conviction of such an offence shall be paid out of its funds.

(4) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

Jurisdiction to try offences.

29. Where an offence under this Part is committed outside the Bailiwick-

- (a) proceedings for the offence may be taken in Guernsey,
and

- (b) the offence may for all incidental purposes be treated as having been committed in Guernsey.

PART VI
INTERPRETATION

Meaning of "funds" and "economic resources".

30. (1) In this Law, "**funds**" means financial assets and benefits of every kind, including, without limitation -

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments,
- (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations,
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products,
- (d) interest, dividends and other income on or value accruing from or generated by assets,
- (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments,
- (f) letters of credit, bills of lading and bills of sale,

- (g) documents providing evidence of an interest in funds or financial resources,
- (h) any other instrument of export financing.

(2) In this Law, "**economic resources**" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

Meaning of "financial services".

31. (1) In this Law, "**financial services**" means any service of a financial nature, including (but not limited to) -

- (a) insurance-related services consisting of -
 - (i) direct life assurance,
 - (ii) direct insurance other than life assurance,
 - (iii) reinsurance and retrocession,
 - (iv) insurance intermediation, such as brokerage and agency,
 - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services,
- (b) banking and other financial services consisting of -

- (i) accepting deposits and other repayable funds,
- (ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions),
- (iii) financial leasing,
- (iv) payment and money transmission services (including credit, charge and debit cards, travellers' cheques and bankers' drafts),
- (v) providing guarantees or commitments,
- (vi) financial trading (as defined in subsection (2)),
- (vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues,
- (viii) money brokering,
- (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services,

- (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments),
 - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services),
 - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in subparagraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy),
- (c) any finance business within the meaning of section 24 of the Financial Services Commission (Bailiwick of Guernsey) Law 1987 and not included in subsection (1)(a) and (b).

(2) In subsection (1)(b)(vi), "**financial trading**" means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in -

- (a) money market instruments (including cheques, bills and certificates of deposit),
- (b) foreign exchange,

- (c) derivative products (including futures and options),
- (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements),
- (e) transferable securities, or
- (f) other negotiable instruments and financial assets (including bullion).

Meaning of "relevant institution".

32. (1) In this Law, "**relevant institution**" means -

- (a) a person (whether or not an individual) that carries on financial services business in or from the Bailiwick, or
- (b) a person (not being an individual) who is incorporated or constituted under the law of the Bailiwick or any part thereof and carries on financial services business in any part of the world.

(2) For the purposes of subsection (1), "**financial services business**" has the same meaning as in the Criminal Justice (Proceeds of Crime)

(Bailiwick of Guernsey) Law, 1999^k.

Interpretation: general.

33. (1) In this Law, unless the context otherwise requires -

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

"**Bailiff**" includes the Deputy Bailiff, a Lieutenant Bailiff and any Judge of the Royal Court,

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

"**British overseas territory**" has the same meaning as in the British Nationality Act 1981,

"**community provision**" has the meaning given by section 3(1) of the the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^l,

"**Court of Appeal**" means the court established by the Court of Appeal (Guernsey) Law, 1961^m,

^k Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005; No. XV of 2007 and No. XIII of 2010; Recueil d'Ordonnances Tome XXVIII, pp. 266 and 274; Tome XXIX, pp. 112 and 406 and Tome XXXII, p. 666; Ordinance No. XXXVII of 2008 and Nos. XVI and XXXIV of 2010; G.S.I. No. 27 of 2002; No. 43 of 2006; No. 33 of 2007; Nos. 48 and 73 of 2008 and No. 12 of 2010.

^l Ordres en Conseil Vol. XXXV(1), p. 65.

^m Ordres en Conseil Vol. XVIII, p.315.

"**customs officer**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972ⁿ,

"**designated person**" has the meaning given by section 1,

"**document**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include producing a copy of the information in legible form,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**economic resources**" has the meaning given by section 30(2),

"**final designation**" means a designation under section 4 (including any renewed such designation),

"**financial services**" has the meaning given by section 31,

"**funds**" has the meaning given by section 30(1),

"**Her Majesty's Procureur**" includes Her Majesty's Comptroller,

"**interim designation**" means a designation under section 2,

ⁿ Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278 and Vol. XXXIII, p. 217; Order in Council No. X of 2004.

"international sanctions" include sanctions adopted by the Security Council of the United Nations and sanctions under any community provision,

"Jersey" means the Bailiwick of Jersey,

"the Office of the Legal Aid Administrator" means the office established under section 2(1) of the Legal Aid (Bailiwick of Guernsey) Law, 2003⁰,

"police officer" means -

- (a) a member of the salaried police force of the Island of Guernsey, and
- (b) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey, and

includes a customs officer,

"relevant institution" has the meaning given by section 32,

"relevant Security Council resolutions" means -

- (a) resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001,

⁰ Order in Council No. VI of 2004 and see Recueil d'Ordonnances Tome XXIX, p. 406.

- (b) resolution 1452 (2002) adopted by the Security Council of the United Nations on 20th December 2002, and
- (c) such other resolution as the Policy Council may by order prescribe,

"**renew**" means, in respect of a final designation, renew under section 5,

"**the Royal Court**" means the Royal Court of Guernsey sitting as an Ordinary Court and for the purposes of this Law the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats,

"**the States**" means the States of Guernsey,

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

"**terrorism**" has the same meaning as in the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^P, and

"**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^Q.

^P Order in Council No. XVI of 2002.

^Q Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^r shall apply to the interpretation of this Law throughout the Bailiwick.

(3) A reference in this Law to any enactment, to the relevant Security Council resolutions and any Act of Parliament is a reference to that enactment, those resolutions and that Act as amended from time to time.

PART VII MISCELLANEOUS

Service of notices.

34. (1) This section applies in relation to any notice to be given to a person by the Policy Council under this Law.

(2) Any such notice may be given -

- (a) by posting it to the person's last known address, or
- (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office of the body or partnership concerned.

(3) Where the Policy Council does not have an address for the person, it must make arrangements for the notice to be given to the person at the first available opportunity.

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

Delegation.

35. (1) The Policy Council may, by instrument in writing, delegate wholly or partly any of its functions under this Law to any other person or to any body.

(2) The delegation may be unconditional or subject to any condition specified in the instrument of delegation.

(3) The delegation of functions by the Policy Council under this section shall not prevent the Policy Council from itself performing those functions.

(4) Where any licence, permit or authorization is granted in purported performance of a function delegated under subsection (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the function had not been delegated, or that any requirement attached to the delegation of the function had not been complied with.

(5) Nothing in this section affects the operation of section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law 1991^s.

Consequential amendments.

36. The Schedule (amendments consequential on this Law) shall have effect.

Power to give effect by Ordinance.

37. (1) The States may by Ordinance make such additional or alternative provision as they think fit for the purposes of giving effect to the

^s Ordres en Conseil Vol. XXXIII, p. 478.

relevant Security Council resolutions throughout the Bailiwick including, without limitation, provision amending this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).

General provisions as to Ordinances and orders.

38. (1) An Ordinance or order under this Law -

(a) may be amended or repealed by a subsequent Ordinance or order hereunder, and

(b) in the case of an Ordinance, may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(2) Any power to make an Ordinance or order may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends,

or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes, or
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) An order (other than rules or an order of a court or tribunal) under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the order be annulled, then the order shall cease to have effect, but without prejudice to anything done under the order or to the making of a new order.

Citation and commencement.

39. (1) This Law may be cited as the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011.

(2) This Law shall come into operation on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes.

SCHEDULE
AMENDMENTS CONSEQUENTIAL ON THIS LAW

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

1. In the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 -

- (a) in section 49(6), in the definition of money laundering, immediately after "section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002", insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law 2011",
- (b) in section 49A(6), in the definition of money laundering, immediately after "section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002" insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law 2011".

Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

2. In section 79(1) of the Terrorism and Crime (Bailiwick of Guernsey) Law 2002, in the definition of terrorist financing, immediately after "section 8, 9, 10 or 11", insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law 2011".

Transfer of Funds (Guernsey) Ordinance, 2007.

3. In section 10(1) of the Transfer of Funds (Guernsey) Ordinance, 2007^t -

(a) in subparagraph (vi), omit "or", and

(b) immediately after subparagraph (vii), insert -

"or

(viii) the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011, or

(ix) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011,".

Transfer of Funds (Alderney) Ordinance, 2007.

4. In section 10(1) of the Transfer of Funds (Alderney) Ordinance, 2007^u -

(a) in subparagraph (vi), omit "or", and

(b) immediately after subparagraph (vii), insert -

"or

^t Recueil d'Ordonnances Tome XXXII, p. 194.

^u Alderney Ordinances No. VI of 2007.

- (viii) the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011, or
- (ix) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011, "

Transfer of Funds (Sark) Ordinance, 2007.

5. In section 10(1) of the Transfer of Funds (Sark) Ordinance, 2007^v -

- (a) in subparagraph (vi), omit "or", and
- (b) immediately after subparagraph (vii), insert -

"or

- (viii) the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011, or
- (ix) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011, "

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

6. In regulation 19(1) of the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007^w, in subparagraph (a) of the definition of "terrorist financing", immediately after

^v Folio No. 157.

^w G.S.I. No. 33 of 2007.

"section 8, 9, 10 or 11 of the Terrorism Law" insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011".

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

7. In regulation 30(1) of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008^x, in subparagraph (a) of the definition of "terrorist financing", immediately after "section 8, 9, 10 or 11 of the Terrorism Law" insert ", or section 9, 10, 11, 12 or 13 of the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011".

^x G.S.I. No. 49 of 2008.