

GUERNSEY STATUTORY INSTRUMENT

2013 No.

**The Criminal Justice (Proceeds of Crime) (Legal
Professionals, Accountants and Estate Agents)
(Bailiwick of Guernsey) (Amendment) Regulations, 2013**

<i>Made</i>	<i>25th March, 2013</i>
<i>Coming into operation</i>	<i>28th March, 2013</i>
<i>Laid before the States</i>	<i>, 2013</i>

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

Amendment of regulation 1A.

1. In regulation 1A(c) of the Principal Regulations, immediately after "customers" insert "or clients".

Amendment of regulation 3.

2. For regulation 3 of the Principal Regulations, substitute -

^a Order in Council No. VIII of 1999, as amended by Order in Council No. II of 2005 and No. XV of 2007, Ordinance No. XXVIII of 1999, No. XII of 2002, No. XXXIII of 2003 and No. XLVII of 2007; 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 Ordinance No. XXXIII of 1999.

"Risk assessment and mitigation.

3. (1) A prescribed business must -

(a) carry out and document a suitable and sufficient money laundering and terrorist financing business risk assessment which is specific to the prescribed business -

(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, and

(b) regularly review its business risk assessment, at a minimum annually, 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.

(2) A prescribed business must -

(a) 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,

- (b) regularly review any risk assessment carried out under subparagraph (a) so as to keep it up to date and, where changes to that risk assessment are required, it must make those changes, and
- (c) 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.

(3) A prescribed business must have regard to -

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

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

Amendment of regulation 5.

3. In regulation 5(4) of the Principal Regulations, omit "who was physically present".

Amendment of regulation 6.

4. In regulation 6 of the Principal Regulations -

- (a) in paragraph (1), for "3(1)(c)" substitute "3(2)(a)",
and
- (b) in paragraph (2), omit subparagraph (b).

Amendment of regulation 13.

5. In regulation 13(2)(c) of the Principal Regulations, for "rules or guidance" substitute "rules, guidance, instructions, notices or other similar instruments".

Amendment of regulation 15.

6. In regulation 15 of the Principal Regulations, omit subparagraph (d).

Amendment of regulation 17.

7. In regulation 17 of the Principal Regulations -

- (a) in paragraph (1), omit ", subject to payment of the annual fee under paragraph (2),", and
- (b) after paragraph (3), insert -

"(4) A prescribed business must provide to the Commission by 14 December in each year a statement of the number of full time (including full time equivalent) members of staff (including executive directors and partners) employed by, or forming, the business as at 30 November in that year, calculated in accordance with the following formula:-

$$A + B + C = X$$

Where

A is the number of full time employees,

B is the number of executive directors and partners,

C is the total hours worked by part time employees divided by the number of hours in the prescribed business's working week rounded up to the nearest whole number, where the result is equal to or greater than .5 and rounded down if less than .5

X is the number of full time (including full time equivalent) members of staff."

Amendment of regulation 30.

8. In regulation 30(1) of the Principal Regulations -

(a) in the definition of "beneficial owner"-

(i) in subparagraph (b) immediately before "trust", insert "foundation or", and

(ii) for item (ii), substitute -

"(ii) any other person who benefits from that foundation or trust or other legal arrangement,"

(b) for the definition of "business relationship", substitute-

"business relationship" means a business, professional or commercial relationship between a prescribed business and a client which is expected by the prescribed business, at the time when contact is established, to have an element of duration, ",

- (c) for the definition of "Financial Action Task Force Recommendations on Money Laundering", substitute –

"Financial Action Task Force Recommendations on Money Laundering" means the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation issued by the Financial Action Task Force as revised or reissued from time to time, ",

- (d) immediately after the definition of "Financial Investigation Unit", insert the following definitions –

"foundation" means –

- (a) a foundation created under the Foundations (Guernsey) Law, 2012 or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (and howsoever named),

"foundation official" means –

- (a) in relation to a foundation created under the

Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and

- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in subparagraph (a),

"founder" means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a founder within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person corresponding to a founder described in subparagraph (a), "
- (e) in the definition of "relevant enactments" for subparagraphs (f) and (g), substitute -

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

(g) the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011,"

- (f) in the definition of "terrorist financing" in subparagraph (a), immediately after "Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011", insert ", or section 2 or 3 of the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011", and
- (g) in the definition of "underlying principal" for subparagraph (a), substitute -

"(a) is a settlor, trustee, protector or enforcer of a trust, or a founder or foundation official of a foundation which is the customer, or client, or the beneficiaries of which are the beneficial owners, or".

Interpretation.

9. (1) In these Regulations, "**the Principal Regulations**" means the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008^b.

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

Citation.

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

^b G.S.I. Nos. 49 and 72 of 2008; No. 31 of 2009 and Nos. 14 and 57 of 2010.

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

Guernsey) (Amendment) Regulations, 2013.

Commencement.

11. These Regulations come into force on the 28th March, 2013.

Dated this 25th day of March, 2013

A handwritten signature in black ink, appearing to read 'P A Harwood', is written over a horizontal dotted line.

DEPUTY P A HARWOOD

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) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 ("the 2008 Regulations"). In particular, they amend the provisions of the 2008 Regulations relating to the requirement to undertake a suitable and sufficient money laundering and terrorist financing business risk assessment and to include specific reference to foundations.

The Regulations come into force on the 28th March, 2013.