

GUERNSEY STATUTORY INSTRUMENT

2010 No.

**The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey)
Law, 1999 (Amendment of Schedules 1 and 2)
Regulations, 2010**

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

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

Amendment of Schedule 1 to the Law of 1999.

1. In Schedule 1 to the Law of 1999 -

- (a) in paragraph 1 immediately after "when carried on by way of business", insert "for or on behalf of a customer",
- (b) immediately after paragraph 4, insert -

"4A. Buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps, except where -

^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, Ordinance No. XII of 2002, Ordinance 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 XXXIII of 1999.

- (a) in the case of buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion, the business consists only of buying, selling or arranging for the buying or selling of bullion, or otherwise dealing in bullion, where the value of each purchase, sale or deal does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked,
- (b) in the case of buying postage stamps, the business consists only of buying postage stamps where the value of each purchase does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, and
- (c) in the case of selling postage stamps, the business consists only of selling postage stamps -
 - (i) where the value of each sale does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, or
 - (ii) in the course of -
 - (A) a postal services business carried on under the authority of a licence granted under the Post Office (Bailiwick of Guernsey) Law, 2001, or
 - (B) a business authorized to sell postage stamps by the holder of a licence under that Law."

- (c) in paragraph 6, immediately after "banker's drafts", insert "and electronic money",
- (d) in paragraph 8, omit -
 - (i) "for account of customers", and
 - (ii) ", including, without limitation, bullion",
- (e) in paragraph 9, omit "for and on behalf of a customer",
- (f) in paragraph 23, after "(a "fiduciary licence")" insert ", or carrying on by way of business the activities described in sections 3(1)(g) or (x) of that Law", and
- (g) paragraph 26 is repealed.

Amendment of Schedule 2 to the Law of 1999.

- 2. In Schedule 2 to the Law of 1999 for paragraph 5, substitute -

"5. Legal and accountancy services.

The business of lawyer, notary or other independent legal professional, when they prepare for or carry out transactions for a client in relation to the following activities -

- (a) the acquisition or disposal of an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest),
- (b) the management of client money, securities or other assets,
- (c) the management of bank, savings or securities accounts,

- (d) the organisation of contributions for the creation, operation, management or administration of companies, or
- (e) the creation, operation, management or administration of legal persons or arrangements, and the acquisition or disposal of business entities,

or the business of auditor, external accountant, insolvency practitioner or tax adviser.

For the purposes of this paragraph, an "**independent legal professional**" does not include legal professionals employed by -

- (a) public authorities, or
- (b) undertakings which do not by way of business provide legal services to third parties,

an "**auditor**" means any person who, by way of business, provides audit services pursuant to any function under an enactment,

"**external accountant**" means any person who, by way of business, provides accountancy services to third parties and does not include accountants employed by –

- (a) public authorities, or
- (b) undertakings which do not by way of business provide accountancy services to third parties,

"**insolvency practitioner**" means any person who, by way of business, provides services which include acceptance of appointment as an administrator, liquidator or receiver under the Companies (Guernsey) Law, 2008, the Limited Partnerships (Guernsey) Law, 1995 or any other similar enactment,

"**tax adviser**" means any person who, by way of business, provides advice about the tax affairs of other persons,

and, for the avoidance of doubt, in each case, does not include an employed person whose duties relate solely to the provision of audit services or accountancy services or services of a type described in the above definitions of insolvency practitioner or tax adviser, as the case may be, to his employer."

Interpretation.

3. (1) In these Regulations "**the Law of 1999**" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

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

(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.

Supplemental and transitional provisions.

4. (1) Any business of a type described in the amendment to the Law of 1999 under regulation 2 may, upon and at any time after the day referred to in regulation 6(1), register as a prescribed business under the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008^c.

(2) During the period commencing on the 4th October 2010 and ending on the 30th October 2010 no criminal proceedings may be brought for any infringement of regulation 26(1)(b) of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 by a specified business.

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

^c G.S.I. Nos. 49 and 72 of 2008 and No. 31 of 2009.

(3) For the purposes of paragraph (2), a "**specified business**" is a prescribed business of a type -

- (a) described in regulation 26(1)(b) of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008, and
- (b) which, but for the amendment to the Law of 1999 made by regulation 2, would not otherwise be required to register as such under those Regulations.

Citation.

5. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2009.

Commencement.

6. (1) Subject to paragraph (2), these Regulations shall come into force on the 22nd February, 2010.

(2) Regulation 2 shall come into force on the 4th October 2010.

Dated this 22nd day of February, 2010

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DEPUTY 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 Schedules 1 and 2 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

Schedule 1 to that Law lists those businesses which are financial services businesses for the purpose of the Law. The amendments made to Schedule 1 by these Regulations include –

- (a) an amendment which has the effect, in relation to some businesses listed in Schedule 1, that they are "financial services businesses" only when carried on by way of business for or on behalf of a customer, and
- (b) an amendment which adds to the list of businesses, subject to certain exceptions (including, for example, a postal services business carried on under the authority of a licence granted under the Post Office (Bailiwick of Guernsey) Law, 2001), the businesses of the buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps.

Schedule 2 to the Law prescribes those businesses that are "relevant businesses" for the purposes of the Law. The businesses of dealing in high value goods, estate agency, the provision of casinos or organized gambling services and the provision of legal and accountancy services are all relevant businesses. These Regulations amend the description of legal and accountancy services in order to include services provided by way of business by external accountants, insolvency practitioners, auditors and tax advisers, except where the services are provided by employed persons to their employers.

There are supplemental and transitional provisions which defer, until 4 October 2010, any requirement for businesses that fall within the new definition of the business of legal and accountancy services to register under the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 ("the 2008 Regulations"). During the transitional period which runs from the date of commencement of these Regulations until 4 October 2010, businesses can nonetheless register with the Guernsey Financial Services Commission under the 2008 Regulations. As from 1 November 2010 businesses falling within the new definition must both be registered and comply with the relevant regulations and rules.