

# PROJET DE LOI

ENTITLED

## **The Disclosure (Bailiwick of Guernsey) Law, 2007 \***

*[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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\* No. XVI of 2007; as amended by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2008 (No. XXXIX of 2008); the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009); the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010 (No. XIV of 2010); the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010 (No. XIX of 2010); the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2010 (No. XXXVII of 2010). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

# PROJET DE LOI

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## **The Disclosure (Bailiwick of Guernsey) Law, 2007**

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## **The Disclosure (Bailiwick of Guernsey) Law, 2007**

**THE STATES**, in pursuance of their Resolutions of the 31<sup>st</sup> May, 2002<sup>a</sup>, 28<sup>th</sup> September, 2005<sup>b</sup> and 27<sup>th</sup> July, 2006<sup>c</sup>, 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

#### DISCLOSURE OF INFORMATION BY FINANCIAL SERVICES BUSINESSES AND BY NON FINANCIAL SERVICES BUSINESSES

#### **Failure to disclose knowledge or suspicion etc. of money laundering—financial services businesses.**

1. (1) A person commits an offence if each of the following conditions is satisfied.

(2) The first condition is that he –

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

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<sup>a</sup> Article VI of Billet d'État No. IX of 2002.

<sup>b</sup> Article XI of Billet d'État No. XIV of 2005.

<sup>c</sup> Article XXIV of Billet d'État No. XIII of 2006.

that another person is engaged in money laundering.

- (3) The second condition is that the information or other matter –
  - (a) on which his knowledge or suspicion is based, or
  - (b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter –

- (a) to a nominated officer or a [prescribed police officer],
- (b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 11.

- (6) But a person does not commit an offence under this section if-
  - (a) he has a reasonable excuse for not disclosing the information or other matter,

*Consolidated text*

(b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances, or

(c) subsection (7) applies to him.

(7) This subsection applies to a person if –

(a) he does not know or suspect that another person is engaged in money laundering, and

(b) he has not been provided by his employer with such training as is required by regulations made under section 49 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>d</sup>.

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant [rules, guidance or instructions] which were at the time concerned –

(a) made or issued by the Commission under section 15 or any other enactment, and

(b) published in a manner it approved as appropriate in its opinion to bring the [rules, guidance or instructions] to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which –

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<sup>d</sup> Order in Council No. VIII of 1999.

*Consolidated text*

- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and
- (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(10) For the purposes of a disclosure to a nominated officer –

- (a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in the course of the business of which the person carries out a function (whether or not for gain or reward), and
- (b) references to employment are to be construed accordingly.

(11) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him –

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or

- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(12) But subsection (11) does not apply to information or another matter which is communicated or given with a view to furthering a criminal purpose.

(13) A disclosure [made in good faith] to a nominated officer or to a [prescribed police officer] does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

[(14) In subsection (13) "**good faith**" means that the person making the disclosure –

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that the person in respect of whom the disclosure is made is engaged in money laundering.]

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**NOTES**

*In section 1,*

*the words "prescribed police officer" in square brackets, wherever occurring, were substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 2, with effect from 28th April, 2010;*

*first, the words in square brackets in subsection (8) were substituted, second the words in the first pair of square brackets in*

*subsection (13) were inserted and, third, subsection (14) was inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 1(a), section 1(b) and section 1(c), with effect from 24th March, 2010.*

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**Failure to disclose knowledge or suspicion etc. of money laundering—  
nominated officers in financial services businesses.**

2. (1) A person who is a nominated officer under section 1(9)(a) commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he –

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(3) The second condition is that the information or other matter –

- (a) on which his knowledge or suspicion is based, or
- (b) which gives reasonable grounds for such knowledge or suspicion,

came to him in consequence of a disclosure made under section 1.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter –

- (a) to a [prescribed police officer],
- (b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 11.

(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant [rules, guidance or instructions] which were at the time concerned –

- (a) made or issued by the Commission under section 15 or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the [rules, guidance or instructions] to the attention of persons likely to be affected by it.

(8) A disclosure [made in good faith] to a [prescribed police officer] does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

[(9) In subsection (8) "**good faith**" means that the person making the disclosure –

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that the person in respect of whom the disclosure is made is engaged in money laundering.]

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**NOTES**

*In section 2,*

*the words "prescribed police officer" in square brackets, wherever occurring, were substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 2, with effect from 28th April, 2010;*

*first, the words in square brackets in subsection (7) were substituted, second the words in the first pair of square brackets in subsection (8) were inserted and, third, subsection (9) was inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 2(a), section 2(b) and section 2(c), with effect from 24th March, 2010.*

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**Failure to disclose knowledge or suspicion etc. of money laundering—non financial services businesses.**

3. (1) A person commits an offence if each of the following conditions is satisfied.

- (2) The first condition is that he –
  - (a) knows or suspects, or
  - (b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

- (3) The second condition is that the information or other matter –
  - (a) on which his knowledge or suspicion is based, or
  - (b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a non financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter to a [prescribed police officer].

(6) But a person does not commit an offence under this section if –

- (a) he does not know or suspect that another person is engaged in money laundering and he has not been provided by his employer with any training required by regulations made under section 49A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>e</sup>,

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<sup>e</sup> Order in Council No. VIII of 1999.

*Consolidated text*

- (b) if paragraph (a) does not apply, the person was in employment at the time in question and he disclosed the information or other matter to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures,
- (c) he has some other reasonable excuse for not disclosing the information or other matter, or
- (d) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant [rules, guidance or instructions] which were at the time concerned –

- (a) made or issued by the Commission under section 15 or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the [rules, guidance or instructions] to the attention of persons likely to be affected by it.

(8) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him –

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) But subsection (8) does not apply to information or another matter which is communicated or given with a view to furthering a criminal purpose.

(10) A disclosure [made in good faith] to a [prescribed police officer] does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

[(11) In subsection (10) "**good faith**" means that the person making the disclosure –

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that the person in respect of whom the disclosure is made is engaged in money laundering.]

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**NOTES**

*In section 3,*

*the words "prescribed police officer" in square brackets, wherever occurring, were substituted by the Disclosure (Bailiwick of Guernsey)*

*(Amendment) (No. 2) Ordinance, 2010, section 2, with effect from 28th April, 2010;*

*first, the words in square brackets in subsection (7) were substituted, second the words in the first pair of square brackets in subsection (10) were inserted and, third, subsection (11) was inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 3(a), section 3(b) and section 3(c), with effect from 24th March, 2010.*

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**[Disclosure under section 1(13), 2(8) or 3(10).**

**3A.** (1) Disclosure under section 1(13), 2(8) or 3(10) includes disclosure of –

- (a) any information or document relating to the knowledge, suspicion or reasonable grounds for suspicion that the person in respect of whom the disclosure is made is engaged in money laundering, and
- (b) any fact or matter upon which such knowledge, suspicion or reasonable grounds for suspicion is based.

(2) For the purposes of subsection (1), "**information or document**" includes any information or document relating to –

- (a) any money or property,
- (b) any transaction concerning such money or property, and
- (c) the parties to any such transaction.]

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**NOTE**

*Section 3A was inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 3, with effect from 28th April, 2010.*

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**Tipping-off.**

4. (1) A person is guilty of an offence if –
- (a) he knows, or suspects, that –
    - (i) a required disclosure has been [or will be] made to a [prescribed police officer], or a nominated officer, under section 1, 2 or 3, or
    - (ii) any information or other matter concerning the required disclosure has been [or will be] communicated to a [prescribed police officer], or nominated officer, whether or not in the form and manner (if any) prescribed for the purposes under section 11, and
  - [(b) he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion.]

[(1A) Nothing in subsection (1) makes it an offence for any person to disclose any information or matter if the disclosure is for any of the purposes set out in subsection (1B).]

- (1B) The purposes are –
- (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the Bailiwick or elsewhere,
  - (b) the prevention, detection, or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the Bailiwick or of any country outside the Bailiwick,
  - (c) the carrying out –
    - (i) by the Commission, or
    - (ii) by a body in another country which carries out similar functions to the Commission,of its functions,
  - (d) the carrying out of any functions of any intelligence service, or
  - (e) the carrying out of any function which appears to the Home Department to be a function of a public nature and which it designates as such by order.]

(2) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter –

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or
- (b) to any person –
  - (i) in contemplation of, or in connection with, legal proceedings, and
  - (ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) ...

(5) No [prescribed police officer] or other person is guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct.

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**NOTES**

*In section 4,*

*the words in the first and third pairs of square brackets in paragraph (a) of subsection (1) were inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 1, with effect from 26th November, 2008;*

*the words "prescribed police officer" in square brackets, wherever occurring, were substituted by the Disclosure (Bailiwick of Guernsey)*

*(Amendment) (No. 2) Ordinance, 2010, section 2, with effect from 28th April, 2010;*

*paragraph (b) of subsection (1) was substituted, and subsection (1A) and subsection (1B) were inserted, by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2010, respectively section 1(a) and section 1(b), with effect from 28th July, 2010;<sup>1</sup>*

*subsection (4) was repealed by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2010, section 1(c), with effect from 28th July, 2010.<sup>2</sup>*

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### **Penalties.**

5. A person guilty of an offence under section 1, 2, 3 or 4 is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale or to both, or
  - (b) on conviction or indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

## PART II

### DISCLOSURE OF INFORMATION BY AUTHORISED PERSONS

#### **Disclosure of information to police officer by authorised person.**

6. (1) An authorised person may disclose to a police officer any information held by a government department if the disclosure is made for the purpose of –
- (a) any criminal investigation which is being or may be carried out, whether in the Bailiwick or elsewhere,

*Consolidated text*

- (b) any criminal proceedings which have been or may be initiated, whether in the Bailiwick or elsewhere,
- (c) the initiation or bringing to an end of any such investigation or proceedings, or
- (d) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

(2) Subsection (1) does not apply to any information in the possession of the [Director of Income Tax].

(3) No disclosure of information shall be made by virtue of this section unless the authorised person who makes the disclosure is satisfied that the making of the disclosure is proportionate to what is thereby sought to be achieved.

(4) Nothing in this section prejudices any power to disclose information which exists apart from this section.

(5) The information that may be disclosed by virtue of this section includes information obtained before this Law came into force.

(6) A disclosure under this section does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

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**NOTE**

*In section 6, the words in square brackets were substituted by the*

*Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.*

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**Interpretation of Part II.**

7. In this Part –

**"authorised person"** means –

(a) in Guernsey, a person employed in a department of the States of Guernsey who is authorised by –

(i) the chief officer of the department, or

(ii) in the event that the department has no chief officer, the Chief Executive of the States of Guernsey,

to make disclosures under this Law,

(b) in Alderney, the Chief Executive of the States of Alderney, and

(c) in Sark, a person appointed by the Chief Pleas of Sark to make disclosures under this Law,

**"department of the States of Guernsey"** means any department or committee (however called) of the States of Guernsey, and includes the Policy Council, and

**"government department"** means –

- (a) in Guernsey, any department of the States of Guernsey,
- (b) in Alderney, any Committee of the States of Alderney, and
- (c) in Sark, any Committee of the Chief Pleas of Sark.

### PART III

#### DISCLOSURE OF INFORMATION BY POLICE OFFICERS

**Disclosure of information by police officers.**

8. (1) Subject to subsection (4), information obtained by a police officer –

- (a) under this Law or any other enactment, or
- (b) in connection with the carrying out of any of the officer's functions,

may be disclosed to any other person if the disclosure is for any purposes set out in subsection (2).

(2) The purposes are any of the following –

- (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the Bailiwick or elsewhere,

- (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the Bailiwick or of any country or territory outside the Bailiwick,
- (c) the carrying out –
  - (i) by the Commission, or
  - (ii) by a body in another country or territory which carries out any similar function to the Commission,of its functions,
- (d) the carrying out of any functions of any intelligence service, or
- (e) the carrying out of any function which appears to the Home Department to be a function of a public nature and which it designates as such by order.

(3) A disclosure under this section does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

- (4) Nothing in this section authorises –
  - (a) a disclosure in contravention of any provisions of the

Data Protection (Bailiwick of Guernsey) Law, 2001<sup>f</sup> of personal data which are not exempt from those provisions,

- (b) a disclosure which is prohibited by Part I of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003<sup>g</sup>, or
- (c) a disclosure in contravention of section 9(5).

#### PART IV

### DISCLOSURE OF INFORMATION BY AND TO [DIRECTOR OF INCOME TAX]

#### **Disclosure of information by [Director of Income Tax].**

9. (1) This section applies to information which is held by or on behalf of the [Director of Income Tax] including information obtained before the coming into force of this section.

(2) No obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise prevents the disclosure to a police officer, in accordance with the following provisions of this section, of information to which this section applies if the disclosure is made for the purpose of –

- (a) facilitating the carrying out of the functions of any

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<sup>f</sup> Order in Council No. V of 2002.

<sup>g</sup> Order in Council No. XXX of 2003.

intelligence service,

- (b) any criminal investigation which is being or may be carried out, whether in the Bailiwick or elsewhere,
- (c) any criminal proceedings which have been or may be initiated, whether in the Bailiwick or elsewhere,
- (d) the initiation or bringing to an end of any such investigation or proceedings, or
- (e) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

(3) No obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise prevents the disclosure to the Commission, or a body in another country or territory which carries out any similar function to the Commission, in accordance with the following provisions of this section, of information to which this section applies if the disclosure is made for the purpose of enabling –

- (a) the Commission, or
- (b) a body in another country or territory which carries out any similar function to the Commission,

to carry out its functions.

(4) No disclosure of information to which this section applies

shall be made under this section unless the person by whom the disclosure is made is satisfied that the making of the disclosure is proportionate to what is thereby sought to be achieved.

(5) Information to which this section applies shall not be disclosed to –

- (a) a police officer,
- (b) the Commission, or
- (c) a body in another country or territory which carries out any similar function to the Commission,

by virtue of this section except by the [Director of Income Tax].

(6) Information obtained by means of a disclosure authorised by subsection (2) or (3) shall not be further disclosed by a police officer or the Commission except –

- (a) for a purpose mentioned in those subsections, and
- (b) with the consent of the [Director of Income Tax].

(7) A consent for the purposes of subsection (6) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.

(8) Nothing in this section authorises a disclosure, in contravention of any provisions of the Data Protection (Bailiwick of Guernsey)

Law, 2001<sup>h</sup>, of personal data which are not exempt from those provisions.

(9) Nothing in this section prejudices any power to disclose information which exists apart from this section.

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**NOTE**

*In section 9, the heading, and the marginal note thereto, the words in square brackets were substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.*

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**Disclosure of information to [Director of Income Tax] by relevant officer.**

**10.** (1) A relevant officer may disclose to the [Director of Income Tax] any information in his possession which he reasonably believes may assist the [Director] to carry out his functions.

(2) The information that may be disclosed under this section includes information obtained before this Law came into force.

(3) No disclosure of information shall be made under this section unless the relevant officer who makes the disclosure is satisfied that the making of the disclosure is proportionate to what is thereby sought to be achieved.

(4) Nothing in this section prejudices any power to disclose information which exists apart from this section.

(5) A disclosure under this section does not contravene any

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<sup>h</sup> Order in Council No. V of 2002.

obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

- (6) For the purposes of this section "**a relevant officer**" means –
- (a) Her Majesty's Procureur,
  - (b) a member of the salaried police force of the Island of Guernsey who holds the rank of inspector or above,
  - (c) a member of any police force which may be established by the States of Alderney who holds the rank of inspector or above, or
  - (d) a customs officer of the grade of senior investigation officer or above.

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**NOTES**

*In section 10, and the marginal note thereto, the words in square brackets were substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.*

*In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.*

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**PART V**

**POWER TO PRESCRIBE FORM AND MANNER OF AND OTHER MATTERS**

CONCERNING DISCLOSURES

**Power to prescribe form and manner of, and other matters concerning, disclosures.**

11. (1) The Home Department may by regulations prescribe –
- (a) the form and manner in which a disclosure under section 1, 2 or 3 must be made, and
  - (b) such other matters as are reasonably necessary to enable any person to whom a disclosure is made under this Law, or any other enactment, to obtain additional information.
- (2) Without prejudice to the generality of the power under subsection (1), regulations made thereunder may make provision for, or concerning –
- (a) the period of time within which any additional information must be supplied by the discloser following its request,
  - (b) the form and manner in which any such request must be made, and
  - (c) the creation, trial (summarily or on indictment) and punishment of offences, provided that the penalties for the punishment of any such offences shall not exceed those prescribed under section 5.

(3) A disclosure made in pursuance of a request made under regulations under subsection (1) does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(4) For the purposes of this section –

**"additional information"** –

(a) means information which is reasonably necessary to enable the person to whom any disclosure is made to decide –

(i) where the disclosure concerns money laundering, whether to start a money laundering investigation, or

(ii) where the disclosure concerns any other matter, whether to pass the information on so that a decision may be made as to whether to start a criminal investigation in the Bailiwick or elsewhere, and

(b) includes financial, administrative and law enforcement information,

**"a money laundering investigation"** is an investigation into whether a person has engaged in money laundering, and

**"discloser"** means the person making a disclosure under any

provision referred to in subsection (1)(a).

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**NOTE**

*The following Regulations have been made under section 11:*

*Disclosure (Bailiwick of Guernsey) Regulations, 2007;*  
*Disclosure (Bailiwick of Guernsey) (Amendment) Regulations,*  
*2010;*  
*Disclosure (Bailiwick of Guernsey) (Amendment) Regulations,*  
*2011.*

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**PART VI**

**MISCELLANEOUS AMENDMENTS**

**Amendment of definition of "officer of police" in Fiduciaries Law.**

**12.** In section 58(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000<sup>i</sup> immediately after paragraph (c) of the definition of "officer of police", insert –

" and

(d) includes an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,".

**Amendment of Drug Trafficking Law.**

**13.** (1) Section 60 of the Drug Trafficking (Bailiwick of Guernsey)

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<sup>i</sup> Order in Council No. I of 2001.

Law, 2000<sup>j</sup> is repealed, but not subsections (7) and (8).

(2) In section 61(2)(a) of that Law for "58, 59 or 60" substitute "58 or 59".

(3) In section 61(3)(a) of that Law for "58(5), 59(8) or 60(5)" substitute "58(5) or 59(8)".

(4) In section 62(2) the expression "60 or" is repealed.

PART VII  
GENERAL

**Power to amend law relating to disclosure of information by Ordinance.**

**14.** (1) Subject to subsection (3), the States may by Ordinance amend this Law and any other enactment, or any rule of law (including customary or common law), which relates to or concerns, whether directly or indirectly, the disclosure of information.

(2) Without prejudice to the generality of subsection (1) and any other provisions of this Law, an Ordinance under this Law –

(a) may, for the avoidance of doubt –

(i) create new offences, and

(ii) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common

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<sup>j</sup> Order in Council No. VII of 2000.

law, and

- (b) may make provision as to –
  - (i) the disclosure of information to any person including –
    - (aa) a police officer, or
    - (bb) the [Director of Income Tax], and
  - (ii) the form and manner in which any disclosure must be made.

- (3) The power under subsection (1) shall –
  - (a) where it is exercised in respect of Alderney, be exercised following consultation with the Policy and Finance Committee of the States of Alderney, and
  - (b) where it is exercised in respect of Sark, be exercised following consultation with the General Purposes and Finance Committee of the Chief Pleas of Sark,

but a failure to comply with this subsection does not invalidate any Ordinance.

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**NOTES**

*In section 14, the words in square brackets were substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the*

*savings and transitional provisions in section 2 of the 2009 Ordinance.*

*The following Ordinances have been made under section 14:*

*Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2008;  
Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2)  
Ordinance, 2010;  
Disclosure (Bailiwick of Guernsey) (Amendment) (No. 3)  
Ordinance, 2010.*

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**Power for Commission to make rules and issue guidance [or instructions].**

**15.** (1) The Commission may make rules, and issue guidance [and instructions], for the purposes of this Law, or any other enactment or any rule of law (including customary or common law) which relates to or concerns, whether directly or indirectly –

- (a) the disclosure of information, or
- (b) money laundering.

(2) Without prejudice to the generality of subsection (1), [rules, guidance and instructions] thereunder may make provision for, or concerning –

- (a) the policies, procedures and controls which are to be established by financial services businesses and non financial services businesses for the purposes of the disclosure of information,
- (b) the nomination of any person as a nominated officer for the purposes of Part I, and
- (c) the circumstances in which any information or other

matter disclosed under section 1, 2 or 3, or any other enactment, shall, or may also, be disclosed to the Commission.

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**NOTE**

*In section 15, the words in square brackets in, first, the marginal note thereto, second, subsection (1) and, third, subsection (2) were, respectively, inserted, inserted and substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 5(a), section 5(b) and section 5(c), with effect from 24th March, 2010.*

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**Ordinances, regulations, [rules, guidance and instructions].**

**16.** (1) Any Ordinance, regulation, [rule, guidance or instruction] under any provision of this Law –

(a) may be amended or repealed by a subsequent Ordinance, regulation, [rule, guidance or instruction] (as the case may be), and

(b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(2) Any power conferred by this Law to enact, make or issue an Ordinance, regulation, [rule, guidance or instruction], may be exercised –

(a) in relation to all cases to which the power extends, 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 enact or make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends, or any less provision (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 of class of case but for different purposes, and
  - (iii) any such provision either unconditionally or subject to specified conditions.

(3) Any regulations under this Law must be laid before a meeting of the States as soon as possible after being made; and if, at that or their next meeting, the States resolve to annul the regulations, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

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**NOTE**

*In section 16, the words in square brackets in, first, the marginal note thereto, second, subsection (1) and, third, subsection (2) were substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 6(a), section 6(b) and section 6(c), with effect from 24th March, 2010.*

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**Interpretation.**

17. (1) In this Law, unless the context requires otherwise –

"**Director of Income Tax**" means the [Director] referred to in section 205 of the Income Tax (Guernsey) Law, 1975<sup>k</sup> and includes the [Deputy Director],

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

"**business**" includes any trade, profession or economic activity,

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

"**conduct**" includes acts, omissions and statements,

"**criminal conduct**" means any conduct which –

(a) constitutes a criminal offence under the law of any

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<sup>k</sup> Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; Nos. IV and VIII of 1993; No. XXV of 1994; Nos. III and VII of 1995; No. V of 1996; Nos. IV and XXII of 1997; Nos. II and VI of 1999; No. IV of 2000; Nos. VI and XVII of 2001; No. VII of 2002; Nos. IV, VIII and XXVI of 2003; Nos. XII and XVI of 2004; Nos. V and VI of 2005; the Income Tax (Residence) (Guernsey) (Amendment) Law, 2005; the Income Tax (Guernsey) (Amendment) Law, 2005; and the Income Tax (Surcharges and Supplements) (Guernsey) (Amendment) Law, 2005. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2004.

<sup>l</sup> Ordres en Conseil Vol. XXX, p. 243; Orders in Council No. XX of 1991; No. XIII of 1994; No. II of 1997; No. I of 1998; and No. XVII of 2002.

part of the Bailiwick, or

- (b) is, or corresponds to, conduct which, if it all took place in any part of the Bailiwick, would constitute an offence under the law of that part of the Bailiwick,

**"criminal investigation"** means an investigation of any criminal conduct including an investigation of alleged or suspected criminal conduct or an investigation of whether criminal conduct has taken place,

**"criminal proceedings"** does not include legal proceedings outside the Bailiwick unless the conduct with which the defendant in those proceedings is charged is criminal conduct or conduct which, to a substantial extent, consists of criminal conduct,

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

**["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 under Part I, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports,]

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

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<sup>m</sup> Ordres en Conseil Vol. XXIII, p. 573, and XIII of 1991.

economic crime,]

**"financial services business"** has the same meaning as in the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>n</sup>,

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

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

**"information"** includes documents,

**"intelligence service"** has the same meaning as in section 67 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003<sup>o</sup>,

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

- (a) constitutes an offence under section 38, 39 or 40 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (b) constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),

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<sup>n</sup> Order in Council No. VIII of 1999.

<sup>o</sup> Order in Council No. XXX of 2003.

*Consolidated text*

- (d) constitutes aiding, abetting, counselling or procuring 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,

**"non financial services business"** is a business which is not a financial services business,

**"police officer"** means –

- (a) in relation to Guernsey, Herm and Jethou –
  - (i) a member of the salaried police force of the Island of Guernsey, and
  - (ii) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney –
  - (i) a member of the salaried police force of the Island of Guernsey,

- (ii) a member of any police force which may be established by the States of Alderney, and
  - (iii) within the limits of his jurisdiction, a member of the Alderney Special Constabulary appointed pursuant to section 47 of the Government of Alderney Law, 2004<sup>P</sup>, and
- (c) in relation to Sark –
- (i) the Constable,
  - (ii) the Vingtenier, and
  - (iii) a member of the salaried police force of the Island of Guernsey,

and "**police officer**" includes a customs officer,

[ "**prescribed police officer**" means a police officer who is a member of the Financial Intelligence Service,]

"**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>.

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<sup>P</sup> Order in Council No. III of 2004.

<sup>Q</sup> Ordres en Conseil Vol. XXXI, p. 278.

(2) The Interpretation (Guernsey) Law, 1948<sup>r</sup> applies to the interpretation of this Law throughout the Bailiwick.

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

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**NOTES**

*In section 17,*

*the words in square brackets in the definition of the expression "Director of Income Tax" in subsection (1) were substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance;*

*the definitions of the expressions "Financial Intelligence Service", "Financial Investigation Unit" and "prescribed police officer" in subsection (1) were inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 5, with effect from 28th April, 2010.*

*In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.*

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**Part IV not to apply to Sark.**

18. Part IV does not apply to Sark.

**Citation.**

19. This Law may be cited as the Disclosure (Bailiwick of Guernsey) Law, 2007.

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

**Commencement.**

**20.** This Law shall come into force on the day appointed by order of the Home Department; and different dates may be appointed for different provisions of this Law and for different purposes.

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**NOTE**

*The Law was brought into force on 17th December, 2007 by the Disclosure (Bailiwick of Guernsey) Law, 2007 (Commencement) Order, 2007, article 1.*

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<sup>1</sup> Paragraph (b) of subsection (1) was previously substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 4(a), with effect from 24th March, 2010.

<sup>2</sup> Prior to its repeal, subsection (4) was amended by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 4(b), with effect from 24th March, 2010; the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 4(a) and section 4(b), with effect from 28th April, 2010.