

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE CRIMINAL JUSTICE (TERRORISM AND DISCLOSURE) (BAILIWICK OF GUERNSEY)
(AMENDMENT) ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Criminal Justice (Terrorism and Disclosure) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

The Ordinance amends the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and the Disclosure (Bailiwick of Guernsey) Law, 2007. It establishes in law the Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force (GIMLIT), and puts in place information sharing and information protection mechanisms to facilitate its operation. In light of the sensitivity of some of the information that may be shared via GIMLIT, the Ordinance also makes an amendment to the Bailiwick's rehabilitation of offenders legislation to ensure that all necessary checks can be carried out on potential GIMLIT members.

The Criminal Justice (Terrorism and Disclosure) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023

THE STATES, in pursuance of their Resolution of the 25th November 2022^a, and in exercise of the powers conferred on them by sections 81A and 82 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^b, sections 14 and 16 of the Disclosure (Bailiwick of Guernsey) Law, 2007^c, sections 7(4) and 14 of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002^d and all other powers enabling them in that behalf, hereby order:-

Amendment of Terrorism Law.

1. (1) The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 is amended as follows.

(2) After section 40, insert -

"Disclosures within an undertaking or group etc.

40A. (1) An employee, officer or partner of an undertaking does not commit an offence under section 40 if the disclosure is to an employee, officer or partner of the same undertaking.

^a Article XIV of Billet d'Etat No. XX of 2022.

^b Ordres en Conseil Vol. XLII, p. 427; this enactment has been amended.

^c Order in Council No. XVI of 2007; this enactment has been amended.

^d Order in Council No. XIV of 2002.

(2) A person does not commit an offence under section 40 in respect of a disclosure by a financial services business if –

- (a) the disclosure is to a financial services business,
- (b) the financial services business to which the disclosure is made is situated in the Bailiwick or in a country or territory imposing equivalent terrorist financing requirements, and
- (c) both the financial services business making the disclosure and the financial services business to whom it is made belong to the same group.

(3) A professional legal adviser or a relevant professional adviser does not commit an offence under section 40 if –

- (a) the disclosure is to professional legal adviser or a relevant professional adviser,
- (b) both the person making the disclosure and the person to whom it is made carry on business in the Bailiwick or in a country or territory imposing equivalent terrorist financing requirements, and
- (c) those persons perform their professional activities within different undertakings that

share common ownership, management or control.

Permitted disclosures between financial services businesses etc.

40B. (1) This section applies to a disclosure -

- (a) by a financial services business to another financial services business,
- (b) by a professional legal adviser to another professional legal adviser, or
- (c) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

(2) A person does not commit an offence under section 40 in respect of a disclosure to which this section applies if -

- (a) the disclosure relates to -
 - (i) a client or former client of the financial services business or adviser making the disclosure and the financial services business or adviser to whom it is made,
 - (ii) a transaction involving them both, or

- (iii) the provision of a service involving them both,
- (b) the disclosure is for the purpose of the prevention, detection, investigation or prosecution of terrorist financing, including where the person making the disclosure suspects terrorist financing,
- (c) the financial services business or adviser to whom the disclosure is made is situated in the Bailiwick or in a country or territory imposing equivalent terrorist financing requirements, and
- (d) the financial services business or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of the Data Protection (Bailiwick of Guernsey) Law, 2017).

Permitted disclosures to the FIU.

40C. A person does not commit an offence under section 40 if the disclosure is to the Financial Intelligence Unit for the purpose of the prevention, detection, investigation or prosecution of terrorist financing, including where the person making the disclosure suspects terrorist financing.

Regulations.

40D. (1) The Committee for Home Affairs may by regulations prescribe such matters as are reasonably necessary or expedient for the purposes of facilitating the making of disclosures under sections 40A – 40C.

(2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) may make provision in relation to disclosures of, or relating to, information originating from outside the Bailiwick.

Interpretation of sections 40A and 40B.

40E. (1) References in sections 40A and 40B to a disclosure by or to a financial services business include disclosure by or to an employee or officer of the financial services business acting on its behalf; and for this purpose, and in section 40A(1), "**officer**" has the meaning given in paragraph 8 of Schedule 6.

(2) For the purposes of sections 40A and 40B, a country or territory imposes "**equivalent terrorist financing requirements**" if it is specified as such a country or territory in regulations made by the Committee for Home Affairs for that purpose.

(3) In sections 40A and 40B, "**relevant professional adviser**" means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for –

- (a) testing the competence of those seeking admission to membership of such a body as a

condition for such admission, and

- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

(4) In section 40A(2), "**group**" has the meaning given by Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002."

Amendment of Disclosure Law.

2. (1) The Disclosure (Bailiwick of Guernsey) Law, 2007 is amended as follows.

(2) After section 4, insert -

""Disclosures within an undertaking or group etc.

4A. (1) An employee, officer or partner of an undertaking does not commit an offence under section 4 if the disclosure is to an employee, officer or partner of the same undertaking.

(2) A person does not commit an offence under section 4 in respect of a disclosure by a financial services business if –

- (a) the disclosure is to a financial services business,
- (b) the financial services business to which the disclosure is made is situated in the Bailiwick or

in a country or territory imposing equivalent money laundering and proliferation requirements, and

- (c) both the financial services business making the disclosure and the financial services business to whom it is made belong to the same group.

(3) A professional legal adviser or a relevant professional adviser does not commit an offence under section 4 if –

- (a) the disclosure is to professional legal adviser or a relevant professional adviser,
- (b) both the person making the disclosure and the person to whom it is made carry on business in the Bailiwick or in a country or territory imposing equivalent money laundering and proliferation requirements, and
- (c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

Permitted disclosures between financial services businesses etc.

4B. (1) This section applies to a disclosure -

- (a) by a financial services business to another

financial services business,

- (b) by a professional legal adviser to another professional legal adviser, or
- (c) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

(2) A person does not commit an offence under section 4 in respect of a disclosure to which this section applies if -

- (a) the disclosure relates to -
 - (i) a client or former client of the financial services business or adviser making the disclosure and the financial services business or adviser to whom it is made,
 - (ii) a transaction involving them both, or
 - (iii) the provision of a service involving them both,
- (b) the disclosure is for the purpose of the prevention, detection, investigation or prosecution of money laundering or proliferation, including where the person

making the disclosure suspects money laundering or proliferation,

- (c) the financial services business or adviser to whom the disclosure is made is situated in the Bailiwick or in a country or territory imposing equivalent money laundering and proliferation requirements, and
- (d) the financial services business or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of the Data Protection (Bailiwick of Guernsey) Law, 2017).

Permitted disclosures to the FIU.

4C. A person does not commit an offence under section 4 if the disclosure is to the Financial Intelligence Unit for the purpose of the prevention, detection, investigation or prosecution of money laundering or proliferation, including where the person making the disclosure suspects money laundering or proliferation.

Regulations.

4D. (1) The Committee for Home Affairs may by regulations prescribe such matters as are reasonably necessary or expedient for the purposes of facilitating the making of disclosures under sections 4A to 4C.

(2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) may make provision in relation to disclosures of, or relating to, information originating from outside the Bailiwick.

Unauthorised disclosures of information: GIMLIT.

4E. (1) In this section "GIMLIT" means the body named the Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force and includes any successor body, howsoever named.

(2) A person who is or has been a member of GIMLIT is guilty of an offence if without lawful authority the person makes a disclosure of any information, document or other article which is or has been in his or her possession by virtue of his or her position as a member of GIMLIT.

(3) An employee, officer or partner of an undertaking does not commit an offence under subsection (2) if the disclosure is to –

(a) an employee, officer or partner of the same undertaking, or

(b) an employee, officer or partner of an undertaking within the same group.

(4) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, either that the information, document or article in question related to the work of the Financial Intelligence

Unit or the Economic and Financial Crime Bureau, or that the disclosure would be damaging within the meaning of subsection (5).

(5) For the purposes of subsection (4) a disclosure is damaging if -

(a) it causes damage to the work of the Financial Intelligence Unit, the Economic and Financial Crime Bureau, the salaried police force of the Island of Guernsey or Customs and Excise, or to the work of an authority in another jurisdiction whose functions correspond to those of the Financial Intelligence Unit, the Economic and Financial Crime Bureau, the salaried police force of the Island of Guernsey or Customs and Excise, or

(b) it is of information or a document or other article which is such that its unauthorised disclosure would be likely to cause such damage or which falls within a class or description of information, documents or articles the unauthorised disclosure of which would be likely to have that effect.

(6) A person guilty of an offence under this section is liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or

to both, or

- (b) 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.

Interpretation of sections 4A to 4E.

4F. (1) References in sections 4A and 4B to a disclosure by or to a financial services business include disclosure by or to an employee or officer of the financial services business acting on its behalf; and for this purpose, and in section 4A(1) and 4E(3), "**officer**" has the meaning given in paragraph 8 of Schedule 6 to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

(2) For the purposes of sections 4A to 4C –

- (a) references to "**proliferation**" are to the proliferation of weapons of mass destruction, and the financing of the proliferation of weapons of mass destruction, and

- (b) a country or territory imposes "**equivalent money laundering and proliferation requirements**" if it is specified as such a country or territory in regulations made by the Committee for Home Affairs for that purpose.

(3) In sections 4A and 4B, "**relevant professional adviser**" means an accountant, auditor or tax adviser who is a member of a professional

body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for –

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission, and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

(4) In sections 4A(2) and 4E(3), "**group**" has the meaning given by Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002."

Amendment of Rehabilitation of Offenders Ordinance.

3. (1) The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006 is amended as follows.

(2) In Part II (offices and employments) of Schedule 1, at the end insert –

"21. Any person who is a member of the Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force (or any successor body, howsoever named)."

Extent.

4. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

5. This Ordinance may be cited as the Criminal Justice (Terrorism and Disclosure) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023.

Commencement.

6. This Ordinance shall come into force on the day appointed for this purpose by regulations made by the States of Guernsey Committee for Home Affairs; and different dates may be appointed for different provisions and for different purposes.