

2011 No. 1082

PREVENTION AND SUPPRESSION OF TERRORISM

**The Terrorist Asset-Freezing etc. Act 2010 (Guernsey) Order
2011**

Made - - - - - *7th April 2011*

Coming into force in accordance with Article 1(2)

At the Court at Windsor Castle, the 7th day of April 2011

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 54(1) of the Terrorist Asset-Freezing etc. Act 2010(a), by and with the advice of Her Privy Council, makes the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Terrorist Asset-Freezing etc. Act 2010 (Guernsey) Order 2011.

(2) This Order comes into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

- (a) “the 2010 Act” means the Terrorist Asset-Freezing etc. Act 2010; and
- (b) “Guernsey” means the Bailiwick of Guernsey.

(2) The provisions of the Interpretation Act 1978(b) apply to this Order.

Extension of Part 1 of the 2010 Act to Guernsey

3.—(1) Subject to paragraph (2) and the modifications specified in the Schedule to this Order, the provisions of Part 1 (Terrorist Asset-Freezing) of the 2010 Act extend to Guernsey.

(2) The following provisions of Part 1 are not extended to Guernsey—

- (a) section 28 (appeals and reviews: supplementary);
- (b) section 29 (initial exercise of powers to make rules of court);
- (c) section 30 (Treasury report on operation of Part 1);

(a) 2010 c.38.
(b) 1978 c.30.

- (d) section 31 (independent review of operation of Part 1);
- (e) section 36 (time limit for proceedings for summary offences);
- (f) section 37 (consent to prosecution);
- (g) section 38 (procedure for offences by unincorporated bodies);
- (h) section 44 (Crown application);
- (i) section 46 (transitional provisions and savings); and
- (j) section 47 (power to repeal Part).

Effect

4.—(1) Subject to paragraph (2), this Order shall have effect from the date referred to in Article 1 until the day after the day on which the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law 2011 comes into force in Guernsey.

(2) Any designation made under Chapter 1 of Part 1 of the 2010 Act will have effect as from the date of commencement of this Order as if made under the 2010 Act as extended to Guernsey.

Judith Simpson
Clerk of the Privy Council

SCHEDULE

Article 3

Modifications to be made in the extension of Part 1 of the Terrorist Asset-Freezing etc. Act 2010 to Guernsey

1. In section 10 (confidential information)—
 - (a) in subsection (4)(a), after “the Treasury” insert “or the Policy Council”; and
 - (b) in subsection (7)—
 - (i) for “the High Court (in Scotland, the Court of Session)” substitute “the Royal Court”;
 - (ii) for “the Treasury” substitute “Her Majesty’s Procureur”; and
 - (iii) omit “(in Scotland, an interdict)”.

2. In section 16 (exceptions)—
 - (a) in subsection 3(a), for “an enactment relating to social security” substitute “a relevant enactment”;
 - (b) in subsection (4), for “Treasury” substitute “Policy Council”; and
 - (c) in subsection (5), after “designated person” insert “, and relevant enactment includes the Social Insurance (Guernsey) Law, 1978(a), the Health Service (Benefit) (Guernsey) Law, 1990(b), the Long-term Care Insurance (Guernsey) Law, 2002(c) and such other enactment as the States may by Ordinance prescribe”.

3. In section 17 (licences)—
 - (a) for “Treasury”, each time it appears, substitute “Policy Council”; and
 - (b) omit subsection (2).

(a) Ordres en Conseil Vol. XXVI, p.292.
 (b) Ordres en Conseil Vol. XXXII, p.192.
 (c) Order in Council No. XXIII of 2002.

4. In the subheading to Chapter 3 (information for Treasury), for “Treasury” substitute “Policy Council”.

5. In section 19 (reporting obligations of relevant institutions), for “Treasury”, each time it appears, substitute “Policy Council”.

6. In section 20 (powers to request information)—

- (a) for “Treasury”, each time it appears, substitute “Policy Council”; and
- (b) in subsection (5), for “United Kingdom” substitute “Bailiwick”.

7. In sections 21 (production of documents) and 22 (failure to comply with request for information), for “Treasury”, each time it appears, substitute “Policy Council”.

8. In section 23 (general power to disclose information)—

- (a) in subsection (1), after “Treasury” insert “or the Policy Council” ;
- (b) in subsection (1)(g)(i), after “the United Kingdom” insert “, the Bailiwick or the Isle of Man”; and
- (c) in subsection (1)(g)(ii), for “any of the Channel Islands, the Isle of Man” substitute “Jersey”.

9. In section 24 (co-operation with UK or international investigations)—

- (a) in the heading, after “UK” insert “, Bailiwick”;
- (b) after “Treasury” insert “or the Policy Council”; and
- (c) after “United Kingdom” insert “, the Bailiwick”.

10. In section 25 (application of provisions)—

- (a) in subsection (2)(a), for “Data Protection Act 1998(a)” substitute “Data Protection (Bailiwick of Guernsey) Law, 2001(b)”;
- (b) in subsection (2)(b), for “Regulation of Investigatory Powers Act 2000(c)” substitute “Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003(d)”;
- (c) in subsection (3), after “who has acted as” insert “advocate,”;
- (d) in subsection (5), for “Treasury” substitute “Policy Council”; and
- (e) in subsection (6), omit “(in Scotland, to confidentiality of communications)”.

11. In section 26 (appeal to the court in relation to designations), in subsection (2) omit “or, in Scotland, the Court of Session”.

12. In section 27 (review of other decisions by the court)—

- (a) in subsection (1)—
 - (i) for “Treasury” substitute “Policy Council”; and
 - (ii) omit the words “other than a decision to which section 26 applies (appeal to the court in relation to designations)”;
- (b) in subsection (2), for “High Court or, in Scotland, the Court of Session,” substitute “Royal Court”; and
- (c) for subsections (3) and (4) substitute—
 - “(3) The grounds for determining whether the decision should be set aside are that-
 - (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,

(a) 1998 c.29.

(b) Order in Council No. V of 2002.

(c) 2000 c.23.

(d) Order in Council No. XXX of 2003.

- (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.

(4) 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.

(5) 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.”.

13. In section 32 (penalties)—

- (a) for “the relevant maximum”, each time it appears, substitute “12 months”;
- (b) for “the statutory maximum”, each time it appears, substitute “level 4 on the uniform scale”;
- (c) in subsection (4)—
 - (i) for “level 5” substitute “level 4”; and
 - (ii) for “standard” substitute “uniform”; and
- (d) omit subsections (3) and (5).

14. In section 33 (extra-territorial application of offences)—

- (a) for “United Kingdom”, each time it appears, substitute “Bailiwick”;
- (b) in subsection (1)(a), after “UK national” insert “who is ordinarily resident in the Bailiwick”; and
- (c) omit subsections (3) and (4).

15. In section 34 (liability of officers of bodies corporate etc)—

- (a) in the heading, for “Liability of officers of” substitute “Offences by”;
- (b) for subparagraphs (1) to (3), substitute—

“(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.”.

16. In section 35 (jurisdiction to try offences)—

- (a) in subsection (1), for “is committed outside the United Kingdom” substitute “is committed outside the Bailiwick”;
- (b) in subsection (1)(a), for “at any place in the United Kingdom” substitute “in Guernsey”;
- (c) in subsection (1)(b), for “at any such place” substitute “in Guernsey”; and
- (d) omit subsections (2) to (4).

17. In section 40 (meaning of “financial services”), at the end of (1)(b) insert–

“;

- (c) any finance business within the meaning of section 24 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987(a) and not included in subsection (1)(a) or (b).”.

18. In section 41 (meaning of “relevant institution”), for subsections (1) and (2) substitute–

“(1) In this Part “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(b).”.

19. In section 42 (interpretation: general)—

- (a) before the definition of “designated person”, insert–

““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 of Guernsey;

“Bailiwick” means the Bailiwick of Guernsey;

“Court of Appeal” means the court established by the Court of Appeal (Guernsey) Law, 1961(c);

“customs officer” means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972(d);”;

- (b) in the definition of “enactment”—

- (i) at the end of subsection (1)(b)(ii) omit “or”; and

- (ii) at the end of subsection (1)(b)(iii) insert–

“; or

- (iv) any Law, Ordinance or subordinate legislation made by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark;”;

- (c) after the definition of “funds”, insert–

““Her Majesty’s Procureur” includes her Majesty’s Comptroller;”;

- (d) after the definition of “interim designation” insert–

““police officer” includes a customs officer;

“Policy Council” means the States of Guernsey Policy Council;”;

(a) Ordres en Conseil Vol. XXX, p.243.

(b) Ordres en Conseil Vol. XXXIX, p.137.

(c) Ordres en Conseil Vol. XXVIII, p.315.

(d) Ordres en Conseil Vol. XXIII, p.573.

(e) after the definition of “relevant institution” insert—

““Royal Court” means the Royal Court of Guernsey sitting as an Ordinary Court and for the purposes of this Act the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats;” and

(f) after the definition of “the relevant Security Council Resolutions” insert—

““uniform scale” means uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989(a).”.

20. In section 45 (consequential amendments, repeals and revocations)—

(1) in the heading, omit “amendments,” and “and revocations”; and

(2) for section 45, substitute “The Terrorism (United Nations Measures) (Channel Islands) Order 2001 (S.I.2001/3363) in its application to the Bailiwick is repealed in its entirety.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends Part 1 of the Terrorist Asset-Freezing etc. Act 2010 (c.38) (“Part 1”) to the Bailiwick of Guernsey (“Guernsey”), in order to give effect there to resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001 (“resolution 1373”) relating to terrorism and resolution 1452 (2002) adopted on 20th December 2002 (“resolution 1452”) relating to humanitarian exemptions. The extension of the Act also provides for implementation within Guernsey of Regulation (EC) 2580/2001 of specific measures directed at certain persons and entities with a view to combating terrorism (“the EC Regulation”).

The Order will enable the financial restrictions contained in Part 1 in respect of persons designated by HM Treasury or listed under the EC Regulation to be directly effective in Guernsey. It also imposes reporting obligations on financial services businesses in Guernsey. Under the Order the Guernsey authorities will exercise the powers in Part 1 that concern requests for information including the production of documents, and the licensing of access to frozen funds for humanitarian purposes. Although not required under the Order, the Guernsey authorities will also be responsible for publicising within Guernsey designations made by HM Treasury under Part 1.

The Order will cease to have effect once Guernsey has enacted its own legislation to implement resolution 1373, resolution 1452 and the EC Regulation.

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(a) Ordres en Conseil Vol. XXI, p.278.

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