

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. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. 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, Recueil d'Ordonnances Tome XXXIII, p. 472); 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); the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014 (No. XVI of 2014); the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2014 (No. LIII of 2014); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XXXIX of 2015); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 617); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015).

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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 31st May, 2002^a, 28th September, 2005^b and 27th July, 2006^c, 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

[Obligation to disclose knowledge or suspicion etc. of money laundering - financial services businesses.]

1. (1) A person must make a required disclosure [as soon as possible] if the conditions in subsections (2) and (3) are satisfied.

(2) The first condition is that he –

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

a Article VI of Billet d'État No. IX of 2002.

b Article XI of Billet d'État No. XIV of 2005.

c Article XXIV of Billet d'État No. XIII of 2006.

that another person is engaged in money laundering or that certain property is or is derived from the proceeds of criminal conduct.

- (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) Any person who fails to make a required disclosure [as soon as possible] after the information or other matter comes to him commits an offence.

(5) A 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,
 - (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 or that certain property is or represents the proceeds of criminal conduct, 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.

(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 them.

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

(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.]

NOTES

Section 1 was substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 1, with effect from 28th May, 2014.¹

In section 1, the words in square brackets in, first, subsection (1) and, second, subsection (4) were, respectively, inserted and substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2014, section 1(a) and section 1(b), with effect from 26th November, 2014.

The following case has referred to this Law:

Daniel De Kock v. The Law Officers of the Crown (2017) (Unreported, Court of Appeal, 21st July) (Guernsey Judgment No. 33/2017).

[Obligation 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) must make a required disclosure [as soon as possible] if the conditions in subsections (2) and (3) 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 or that certain property is or is derived from the proceeds of any person's criminal conduct.

- (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) A nominated officer who fails to make a required disclosure [as soon as possible] after the information or other matter comes to him commits an offence.

- (5) A 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 them.

(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 or that certain property is or is derived from the proceeds of criminal conduct.]

NOTES

Section 2 was substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 1, with effect from 28th May, 2014.²

In section 2, the words in square brackets in, first, subsection (1) and, second, subsection (4) were, respectively, inserted and substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2014, section 2(a) and section 2(b), with effect from 26th November, 2014.

[Obligation to disclose knowledge or suspicion etc. of money laundering - non financial services businesses.

3. (1) A person must make a required disclosure [as soon as possible] if both of the following conditions 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 or that certain property is or is derived from the proceeds of criminal conduct.

(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) A person who fails to make a required disclosure [as soon as

possible] after the information or other matter comes to him commits an offence.

(5) A 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 or that certain property is or is derived from the proceeds of any person's criminal conduct 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,

(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 –

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- (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 them.

(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 or that certain property is or is derived from the proceeds of any person's criminal conduct.]

NOTES

Section 3 was substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 1, with effect from 28th May, 2014.³

In section 3, the words in square brackets in, first, subsection (1) and, second, subsection (4) were, respectively, inserted and substituted by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2014, section 3(a) and section 3(b), with effect from 26th November, 2014.

[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 [or that certain property is or is derived from the proceeds of any person's criminal conduct], 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.]

NOTES

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

In section 3A, the words in square brackets in subsection (1)(a) were inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 2, with effect from 28th May, 2014.

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 [Committee for Home Affairs] 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.

[(2A) Subsection (1) does not apply to a disclosure made –

- (a) by the client of a professional legal adviser to that adviser in connection with the seeking of legal advice, or
- (b) to any person –
 - (i) in contemplation of legal proceedings, and
 - (ii) for the purposes of those proceedings.]

(3) [Subsections (2) and 2(A) do] 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.

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;⁴

the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016;

subsection (2A) was inserted, and the words in square brackets in subsection (3) were substituted, by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 3, respectively paragraph (a) and paragraph (b), with effect from 28th May, 2014;

subsection (4) was repealed by the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2010, section 1(c), with effect

*from 28th July, 2010.*⁵

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 [Her Majesty's Procureur or] 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,
- (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, [...]
- (d) facilitating a determination of whether any such investigation or proceedings should be initiated or

brought to an end[,]

- [(e) any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, or
- (f) any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law.]

(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.

NOTES

In section 6,

first, the words in square brackets in subsection (1) were inserted,

second, the word omitted in square brackets immediately after subsection (1)(c) was repealed, third, the punctuation immediately after subsection (1)(d) was substituted and, fourth, paragraph (e) and paragraph (f) of subsection (1) were inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 4, respectively paragraph (a), paragraph (b), paragraph (c) and paragraph (d), with effect from 28th May, 2014;

the words in square brackets in subsection (2) 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.

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 & Resources Committee], 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.

NOTES

In section 7, the words in square brackets in the definition of the expression "department of the States of Guernsey" in subsection (10) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

PART III

DISCLOSURE OF INFORMATION BY POLICE OFFICERS

Disclosure of information by police officers.

8. (1) Subject to subsection (4), information obtained by [Her Majesty's Procureur or] 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, [...]

- [(da) the conduct of –
 - (i) any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, or
 - (ii) any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law, or]
- (e) the carrying out of any function which appears to the [Committee for Home Affairs] 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^f 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

^f Order in Council No. V of 2002.

Guernsey) Law, 2003^g, or

- (c) a disclosure in contravention of section 9(5).

NOTES

In section 8,

first, the words in square brackets in subsection (1) were inserted, second, the word omitted in square brackets immediately after subsection (1)(d) was repealed and, third, paragraph (da) was inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 5, respectively paragraph (a), paragraph (b)(i) and paragraph (b)(ii), with effect from 28th May, 2014;

the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

The following case has referred to section 8:

Daniel De Kock v. The Law Officers of the Crown (2017) (Unreported, Court of Appeal, 21st July) (Guernsey Judgment No. 33/2017).

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

^g Order in Council No. XXX of 2003.

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 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^h, 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.

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.

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

^h Order in Council No. V of 2002.

information which exists apart from this section.

(5) 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.

(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.

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.

[PART IVA

DISCLOSURE OF INFORMATION RELATING TO SANCTIONS

Disclosure relating to international sanctions.

10A. (1) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of that person's officers, servants or agents of any information or document for any of the purposes set out in subsection (2).

(2) The purposes are any of the following –

- (a) the implementation of, compliance with or enforcement of international sanctions measures within the Bailiwick,
- (b) the prevention, detection or investigation of breaches of international sanctions measures that have been given effect within the Bailiwick,
- (c) the enabling of any person or body within the Bailiwick, whose functions include any of the matters set out at paragraphs (a) and (b), to carry out those functions,
- (d) the enabling of any person or body in another country or territory, with similar functions to those set out at paragraphs (a) and (b), to carry out those functions.

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

NOTE

Part IVA and section 10A thereof were inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 6, with effect from 28th May, 2014.

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 [Committee for Home Affairs] 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 [from any person].

(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 [or any other person] 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).

NOTES

In section 11,

the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016;

the words in the second and third pairs of square brackets were inserted by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 7, respectively paragraph (a) and paragraph (b), with effect from 28th May, 2014.

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.*

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, 2000ⁱ immediately after paragraph (c) of the definition of "officer of police", insert –

ⁱ Order in Council No. I of 2001.

" 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) Law, 2000^j 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.

^j Order in Council No. VII of 2000.

(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 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 [Policy and

Performance Committee] of the Chief Pleas of Sark,

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

NOTES

In section 14,

the words in square brackets in subsection (2) 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 words in square brackets in subsection (1) were substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015.⁶

The functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance.⁷

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;
Electronic Census (Guernsey) Ordinance, 2013;
Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014;
Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance,
2014;
Disclosure (Financial Services Commission) (Bailiwick of Guernsey)
(Amendment) Ordinance, 2017.

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.

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.

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 or 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.

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.

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^k and includes the [Deputy Director],

"Bailiwick" means the Bailiwick of Guernsey,

^k 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.

"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, 1987¹,

"conduct" includes acts, omissions and statements,

"criminal conduct" means any conduct which –

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

¹ 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.

Law, 1972^m,

["**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 economic crime,]

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

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

"[**Committee for Home Affairs**]" means the [Committee for Home Affairs] 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^o,

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

^m Ordres en Conseil Vol. XXIII, p. 573, and XIII of 1991.

ⁿ Order in Council No. VIII of 1999.

^o Order in Council No. XXX of 2003.

- (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),
- (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^P, 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,

^P Order in Council No. III of 2004.

["**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^q.

(2) The Interpretation (Guernsey) Law, 1948^r 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.

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;

the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Home Department and its Minister

^q Ordres en Conseil Vol. XXXI, p. 278.

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

arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 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.

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.

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.

NOTE

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

¹ Prior to its substitution, section 1 was amended by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 1, with effect from 24th March, 2010; the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 2, with effect from 28th April, 2010.

² Prior to its substitution, section 2 was amended 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; the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 2, with effect from 28th April, 2010.

³ Prior to its substitution, section 3 was amended by the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 3, with effect from 24th March, 2010; the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 2, with effect from 28th April, 2010.

⁴ 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.

⁵ 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.

⁶ See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

⁷ Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.