

The Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013

THE STATES OF ALDERNEY, in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a, and all other powers enabling them in that behalf, hereby order:-

Application and infringement of EC Regulation.

1. (1) Council Regulation (EC) No. 881/2002 of the 27th May, 2002^b, concerning restrictive measures against the Al- Qaida network ("**the EC Regulation**") is applicable in Alderney in all respects as if Alderney, subject to the modifications in section 2, were a Member State.

(2) A person who infringes, or causes or permits any infringement of, any of the prohibitions in the EC Regulation is guilty of an offence.

Modification of Regulation.

2. Except where the context requires otherwise, the EC Regulation in its application to Alderney is modified as follows -

- (a) Article 10 shall not apply,
- (b) references to the competent authorities of, or in, the Member States shall be construed as references to the Policy Council,

^a Ordres en Conseil Vol. XXXV(1), p. 65.

^b OJ L 139, 29.5.2002, p.9.

- (c) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) subject to paragraph (e), references to the Member State concerned shall be construed as references to the Policy Council,
- (e) references to the Member State concerned shall be construed as including Alderney where such references concern the enforcement of decisions or public policy,
- (f) references to the Union shall be construed as including Alderney,
- (g) references to the customs territory of the Union shall be construed as including Alderney, and references to any measure of the European Union relating to customs and excise, including for the avoidance of doubt entry and departure of goods to and from Alderney, shall be construed where necessary as including customs or excise legislation within the meaning of this Ordinance,
- (h) references to the territory of the Union and its airspace shall be construed as including Alderney, its airspace and the territorial waters adjacent thereto,
- (i) references to the ports of Member States shall be construed as including any port in Alderney, and references to a vessel flying the flag of a Member State

as including a Guernsey ship and a Guernsey fishing vessel,

- (j) references to competent customs authorities of Member States shall be construed as including the Chief Officer of Customs and Excise,
- (k) references to nationals of Member States, or from the territories of Member States, shall be construed as including any person in Alderney or from Alderney,
- (l) references to the law of a Member State shall be construed as including the law of Alderney, and
- (m) the inclusion of any natural or legal person, group or entity in the lists provided for by Article 2 of the EC Regulation shall be subject to any annulment of the EC Regulation in its application to that person group or entity by the Court of Justice of the European Union and having effect in the European Union for the time being.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under the EC Regulation in its application to Alderney, or a decision of the Policy Council not to exercise any of its powers under the EC Regulation, may appeal to the Ordinary Court against that decision on the grounds that -

- (a) the decision was ultra vires or there was some other error of law,

- (b) the decision was unreasonable,
- (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.

(2) On an appeal under this section the Ordinary 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.

(3) On an appeal under this section the Ordinary Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

Reporting Obligations.

4. (1) A relevant institution must inform the Policy Council as soon as practicable if -

- (a) it knows, or has reasonable cause to suspect, that a person -
 - (i) is a designated person, or

(ii) has committed an offence under section 1(2),
and

(b) the information or other matter on which the knowledge or reasonable cause for suspicion is based came to it in the course of carrying on its business.

(2) Where a relevant institution informs the Policy Council under subsection (1) it must state -

(a) the information or other matter on which the institution's knowledge or reasonable cause for suspicion is based, and

(b) any information that the institution holds about the person by which the person can be identified.

(3) Subsection (4) applies if -

(a) a relevant institution informs the Policy Council under subsection (1) that it knows, or has reasonable cause to suspect, that a person is a designated person, and

(b) that person is a customer of the institution.

(4) The relevant institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.

(5) A relevant institution that fails to comply with subsection (1), (2) or (4) is guilty of an offence.

Information.

5. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Policy Council, of information for the purpose of ensuring compliance with the EC Regulation.

Failure to provide information or to co-operate.

6. A person who, without reasonable excuse, fails to comply with any obligation to provide information to or co-operate with the Policy Council in the exercise of any power to request or demand the provision of information, or the cooperation of any person, under any article of the EC Regulation is guilty of an offence.

Furnishing of false information etc.

7. A person who in purported compliance with any article of the EC Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

Penalties and proceedings.

8. (1) A person guilty of an offence under -

(a) section 1(2), 6 or 7, or

(b) paragraph 2(b) or (c) of the Schedule,

is liable -

(i) on conviction on indictment, to imprisonment

for a term not exceeding two years, to a fine, or to both,

- (ii) on summary conviction, to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(2) A person guilty of an offence under section 4(5) or paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(3) A person guilty of an offence under section 4(5) is liable on summary conviction to imprisonment for a term not exceeding twelve months, to a fine not exceeding level 4 on the uniform scale, or to both.

(4) Where a body corporate is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, subsection (4) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Certain provisions of Customs and Excise Law applicable.

9. (1) Section 55 of the Customs and Excise (General Provisions)

(Bailiwick of Guernsey) Law, 1972^c applies to the detention of a person for an offence under section 1 as it applies to the detention of a person for an offence under customs or excise legislation.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, penalties and proceedings for offences under this Ordinance as they apply to offences, penalties and proceedings for offences under customs or excise legislation.

Interpretation.

10. (1) In this Ordinance, except where the context requires otherwise

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"advocate" means an advocate of the Royal Court of Guernsey,

"Bailiff" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délégué and a Judge of the Royal Court,

"Chief Officer of Customs and Excise" has the meaning given by section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly,

"customs or excise legislation" means those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and any other enactment for the time being in force relating to customs or, as

^c Ordres en Conseil Vol. XXIII, p. 573; Vol. XXXIII, p. 217; and Order in Council No. X of 2004.

the case may be, excise,

"designated person" means a natural or legal person, group or entity included in the lists provided for by Article 2 of the EC Regulation, subject to any annulment of the EC Regulation in its application to a particular designated person by the Court of Justice of the European Union and having effect in the European Union for the time being,

"enactment" includes a Law, an Ordinance and any subordinate legislation,

"EC Regulation" has the meaning given by section 1,

"financial services business" has the meaning given by the Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999^d,

"Guernsey fishing vessel" and **"Guernsey ship"** have the meanings given by section 294(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^e,

"Judge of the Royal Court" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008^f,

^d Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005; No. XV of 2007 and No. XIII of 2010; Recueil d'Ordonnances Tome XXVIII, pp. 266 and 274; Tome XXIX, pp. 112 and 406 and Tome XXXII, p. 666; Tome XXXIII, p. 157 Ordinance Nos. XVI and XXXIV of 2010; G.S.I. No. 27 of 2002; No. 43 of 2006; No. 33 of 2007; Nos. 48 and 73 of 2008 and No. 12 of 2010 and No. 14 of 2013.

^e Order in Council No. VIII of 2004; there are amendments not material to this Ordinance.

^f Order in Council No. XXII of 2008.

"Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly constituted by the Bailiff sitting alone,

"Policy Council" means the States of Guernsey Policy Council,

"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.

"subordinate legislation" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect, and

"uniform scale of fines" means the scale of fines from time to time in force under the Uniform Scale of Fines (Alderney) Law, 1989^g,

and other terms used in this Ordinance and the EC Regulation shall have the same meaning as in the EC Regulation.

(2) A reference in this Ordinance to an enactment or to the EC Regulation is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

^g Ordres en Conseil Vol. XXXI, p. 306

Repeals.

11. The Al-Qaida and Taliban (Freezing of Funds) (Alderney) Ordinance, 2011^h, is repealed.

Citation.

12. This Ordinance may be cited as the Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013.

Commencement.

13. This Ordinance shall come into force on the _____, 2013.

^h Ordinance No. IV of 2011.

SCHEDULE

Section 5

INFORMATION

1. (1) The Policy Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Alderney to furnish or produce to it (or, as the case may be, to that authorised person) such information and documents in his possession or control as the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) 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 his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any

document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2. A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time is specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the information was furnished or the document was produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent

for the purposes of this item but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of Alderney,
- (c) on the authority of the Policy Council, to the European Commission, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State to ensure compliance with the EU Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.

