

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

WIRE TRANSFER LEGISLATION

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 18th April, 2017, of the Policy & Resources Committee, they are of the opinion:-

1. To agree that an Ordinance should be enacted under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 to implement Regulation (EU) 2015/847 in Guernsey, subject to appropriate adaptations, exceptions and modifications, and to repeal the Transfer of Funds (Guernsey) Ordinance, 2007; and
2. To direct the Law Officers to prepare such legislation as may be necessary to give effect to the above, including any necessary or expedient supplemental and consequential provision.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

POLICY & RESOURCES COMMITTEE

WIRE TRANSFER LEGISLATION

Presiding Officer
Royal Court
St Peter Port
Guernsey

18th April 2017

Dear Sir

1. Executive Summary

- 1.1 The States of Guernsey enacted the Transfer of Funds (Guernsey) Ordinance, 2007 in order to ensure that no changes need be made to mechanisms for the electronic transfer of funds between the Guernsey and the UK following the introduction of an EU Regulation on transfers of funds (known colloquially as wire transfers). This Regulation implemented a Special Recommendation of the Financial Action Task Force on wire transfers.
- 1.2 Following revisions to the Financial Action Task Force standards in 2012, the EU has issued a new Regulation, which will come into effect from the summer of 2017. This means that Guernsey too needs to revise its legislative framework so that a derogation issued by the UK Government (see below) can remain in place and enable Guernsey to continue to use reduced information provisions, which are not available without the derogation.
- 1.3 The BACS payment system, which serves the UK and the Crown Dependencies and which accounts for a very significant proportion of transfers between the UK and the Dependencies, does not have the capacity to provide the detailed customer information required under the EU Regulation for transfers from third countries to EU Member States. Without the issue of a derogation by the UK Government, which was made on the basis that the Transfer of Funds (Guernsey) Ordinance, 2007, reflected the EU standards in the Regulation, each transfer of funds to the UK would have been, and still would be, treated as an international transfer, requiring more detailed customer information to be included with the transfer.
- 1.4 Therefore, without the enactment of the Guernsey legislation there would not have been a cost effective way of transferring volume payments between Guernsey and the UK.

2. Background

- 2.1 The Transfer of Funds (Guernsey) Ordinance, 2007, together with the separate Transfer of Funds Ordinances for each of Alderney and Sark, are part of the Bailiwick's framework for meeting international standards on anti-money laundering and combating terrorist financing. In particular, these Ordinances were enacted in order to meet the then Recommendations of the Financial Action Task Force on Money Laundering and Terrorist Financing and Regulation (EC) No 1781/2006 of 15 November 2006 on information on the payer accompanying transfers of funds (the Old Regulation).
- 2.2 The Old Regulation treats the EU as a single jurisdiction as it was felt this would guarantee the smooth functioning of the payment infrastructure in the EU. It imposes different requirements for transfers within the EU as opposed to transfers between third countries and the EU.
- 2.3 The then FATF Recommendations had different rules for domestic transfers (transfers within a single jurisdiction) as opposed to international/cross-border transfers (transfers between two jurisdictions). International/cross border transfers are subject to more onerous requirements in respect of the amount of payer information to be included in the transfers. The EU applied the notion of domestic transfers to all intra-EU transfers (i.e. all the Member States were to be treated as a single jurisdiction) and the notion of international/cross-border transfers to transfers between the EU and third countries. As a consequence of this approach, without a mechanism allowing a different approach to be taken, transfers between Member States and Guernsey would be treated as international transfers and, therefore, would need to be accompanied by more detailed information than the domestic transfer requirements applicable to transfers between Member States.
- 2.4 This situation would have resulted in financial institutions in Guernsey being subject to more stringent requirements than their counterparts in the European Community. Also, the BACS payment system (which serves only the UK and the Crown Dependencies) does not have the capacity to provide the detailed originator information for international transfers between the Dependencies and the UK required under the EC's proposals for transfers between Member States and third countries. Consequently, there would not have been a cost effective way of transferring volume payments between Guernsey and the UK. This would have had serious repercussions as a substantial proportion of payments between Guernsey and the other Crown Dependencies and the UK are made using BACS.
- 2.5 Article 17 of the Old Regulation states that the European Commission may authorise any Member State of the European Union to conclude agreements with a territory outside the EU which contain derogations from the Old Regulation, in order to allow for transfers of funds between that territory and the Member State concerned to be treated as transfers of funds within that Member State. Guernsey has received a derogation from the UK Government (as have Alderney and Sark), enabling wire transfers between the Bailiwick and the UK to contain the reduced information

requirements for transfers within the EU compared with transfers between third countries and the EU.

- 2.6 A derogation can only be issued if certain conditions are met, including a condition for the jurisdiction concerned to require payment service providers to apply the same standards as those in the Old Regulation. Such a derogation was issued by the UK Government to Guernsey. Alternative and much more expensive arrangements for most payments between Guernsey and the UK would have been required if the UK had not been in a position to issue the derogation. The position is the same for Alderney and Sark.

3. Requirement for change

- 3.1 On 20 May 2015 the EU enacted Regulation (EU) 2015/847 on information accompanying transfers of funds (the New Regulation). In addition to creating a revised framework in the EU for wire transfers the New Regulation will repeal the Old Regulation. Accordingly, the Old Regulation will be replaced in June 2017 and Guernsey (and Alderney and Sark) needs to meet the requirements of the New Regulation if the derogation issued by the UK under the Old Regulation is to be extended or a new derogation issued. The New Regulation will apply from 26 June 2017 and EU Member States must comply with the New Regulation by that date.
- 3.2 The results of the 2016 UK referendum on the EU do not affect the importance of the timing of the extension of the UK's derogation or the issue of a new derogation by the UK to Guernsey. The derogation needs to be issued on or before 26 June 2017 and continue to be in force until such time as the UK leaves the EU. As part of Guernsey's Brexit discussions with the UK it will be important to ensure that transfers between Guernsey and the UK will continue to be treated as domestic transfers after the UK leaves the EU.
- 3.3 Like the Old Regulation the New Regulation provides for the possibility for such transfers of funds to be treated as transfers within that Member State (ie as domestic transfers) where:
- (a) it shares a monetary union with the Member State concerned or forms part of the currency area of the Member State concerned;
 - (b) it is a member of the payment and clearing systems of the Member State concerned;
 - (c) it requires payment service providers under its jurisdiction to apply the same rules as those established under the Regulation.

4. Proposals

- 4.1 In order to meet all of the above conditions the Guernsey will need to implement legislation which meets the new Regulation. As with the 2007 Ordinance, the most expedient means of achieving this is by way of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 as amended. This Law allows the

States by Ordinance to make such provision, as they may consider necessary or expedient for the purpose of the implementation of any Community provision.

- 4.2 Following consultation with the private sector, the Policy & Resources Committee provided the UK Government with draft new wire transfers legislation for Guernsey in September 2016 so that it was able to liaise with the European Commission on the derogation. That consultation process has not been completed but, in light of the 26 June deadline referred to above, the Committee is seeking policy approval from the States at this stage for the requisite legislation to be prepared for consideration by the States.
- 4.3 The 2007 Ordinance applies in relation to transfers of funds in any currency which are sent or received by a payment service provider (PSP) established in Guernsey (the legislation also provides exceptions to this). PSPs must ensure that transfers of funds are accompanied by substantial information on the payer and verify that information. Reduced requirements are in place where the PSPs of both the payer and the payee are situated in the British Islands – i.e. transfers to the UK, Jersey and the Isle of Man are treated as being domestic transfers and the reduced requirements resulting from this. The Ordinance also contains technical provisions on, for example, missing or incomplete information on the payer; record keeping; the provision of information and documents by PSPs to the authorities in Guernsey; offences; and power for the Guernsey Financial Services Commission (GFSC) to make rules, instructions and guidance for the purposes of the Ordinance. The GFSC monitors compliance by PSPs with the Ordinance.
- 4.4 Key changes to the regime set out in the Old Regulation include:
 - (a) a requirement that transfers of funds are accompanied by information on the payee, not only the payer.
 - (b) a requirement that the accuracy of the information on the payee for transfers of funds of more than EUR 1,000 should be verified.
 - (c) a requirement that the payment service provider (PSP) of the payee and any intermediary PSP establish effective risk-based procedures for determining whether to execute, reject or suspend a transfer of funds that lacks the required payer and payee information.
- 4.5 The Committee proposes that the 2007 Ordinance should be repealed and a new Ordinance enacted enabling Guernsey to meet the New Regulation in such a way that the existing derogation issued by the UK Government can remain in place.
- 4.6 Important supplemental and consequential matters will also need to be addressed in the proposed Ordinance, which will supplement the requirements of the New Regulation itself for the purpose of ensuring those requirements are given appropriate and proportionate effect in our domestic law. These matters include (but are not limited to) the provision of information; monitoring and reporting obligations; provisions relating to the confidentiality of disclosed documents and information; enforcement of the provisions, including but not limited to the creation

of criminal offences and the provision of penalties; and power for the GFSC to make rules, instructions and guidance.

- 4.7 The Policy & Resources Committee is liaising with the authorities in Alderney and Sark with regard to the enactment of legislation in those islands. The implementation of the proposed legislation will ensure that customers within the Bailiwick are not disadvantaged by any changes in the EU Regulation, as the extension or renewal of the existing derogation from the UK Government would enable the BACS system of payment to continue to be used by the UK and the Crown Dependencies.

5. Consultation

- 5.1 The Policy & Resources Committee has worked closely with the Guernsey Financial Services Commission on the development of the proposed legislation.
- 5.2 The banking sector and other finance sector PSPs were consulted in 2016 on the draft legislation.
- 5.3 The Law Officers Chambers have confirmed that they do not have any objection to the proposed changes.

6. Recommendation

- 6.1 The States are asked to decide whether they are of the opinion:-
1. to agree that an Ordinance should be enacted under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 to implement Regulation (EU) 2015/847 in Guernsey, subject to appropriate adaptations, exceptions and modifications; and to repeal the Transfer of Funds (Guernsey) Ordinance, 2007, and
 2. to direct the Law Officers to prepare such legislation as may be necessary to give effect to the above, including any necessary or expedient supplemental and consequential provision.

7. Proposition

- 7.1 In accordance with Rule 4(4) of The Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions accompanying this policy letter are supported unanimously by the Policy & Resources Committee.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens