

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE DISCLOSURE (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2018

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Ordinance makes several amendments to the Disclosure (Bailiwick of Guernsey) Law, 2007 ("the 2007 Law").

Sections 1(2) and (3) are technical amendments to remedy a minor drafting error in the 2007 Law. This relates to the fact that although it is clearly the intention under section 8 of the 2007 Law as currently worded that provisions about the disclosure of information should apply to police officers and HM Procureur equally, some references to HM Procureur have not been carried through in all respects.

Section 1(4) introduces a new section 11A into the 2002 Law. This gives the Committee for Home Affairs ("the Committee") the power to make regulations governing the provision of information to the Financial Intelligence Service if reports have been made to it by other named parties, including authorities in the Bailiwick and elsewhere.

The opportunity has also been taken to make a further technical amendment at section 1(5) to update the name of the branch of the Guernsey Border Agency responsible for investigating economic crime from the Financial Investigation Unit to the Economic Crime Division.

The Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2018

THE STATES, in pursuance of their Resolution of the 8th February, 2018^a, and in exercise of the powers conferred on them by sections 14 and 16 of the Disclosure (Bailiwick of Guernsey) Law, 2007^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Law.

1. (1) The Disclosure (Bailiwick of Guernsey) Law, 2007 ("**the Law**") is amended as set out below.

(2) For the words "Disclosure of information by police officers" wherever they appear, substitute "Disclosure of information by Her Majesty's Procureur or police officers".

(3) In section 8(1)(b), for the words "of any of the officer's functions", substitute "by Her Majesty's Procureur or the officer of any of their respective functions".

(4) After section 11, insert the following -

^a Article XI of Billet d'État No. V of 2018.

^b Order in Council No. XVI of 2007; amended by Ordinance No. XXXIX of 2008; Ordinance No. VII of 2009; Ordinances Nos. XIV, XIX and XXXVII of 2010; Ordinances Nos XVI and LIII of 2014; Ordinance No. XXXIX of 2015; and Ordinance No. IX of 2016.

"Information following other reports."

11A. (1) The Committee for Home Affairs may by regulations prescribe such matters as are reasonably necessary or expedient for the purposes of obtaining information from any party following any report within this section.

(2) Sections 11(2) and (3) shall apply to any regulations made under this section or to any disclosure made in pursuance of a request under those regulations, in the same way as to regulations made under section 11, or to a disclosure made in pursuance to a request under those regulations, as the case may be.

(3) For the purposes of this section, "**information**" means information relating to the report in question which the Financial Intelligence Service reasonably believes -

- (a) is necessary or expedient for the proper discharge of its functions, and
- (b) is within the possession or control of the person to whom the request is made (whether or not that is the person who made the report).

(4) A report is within this section if it is made to the Financial Intelligence Service and is either -

- (a) a report made by any person -
 - (i) in respect of knowledge or suspicion

of criminal conduct within the Bailiwick or elsewhere, whether or not the knowledge or suspicion giving rise to the report was acquired in the course of a business, or

(ii) under any enactment,

(b) a report made for any purpose, including for the purpose of requesting information, by any of the parties within subsection (5), or

(c) a report of the type described in subsection (8).

(5) The parties within this subsection are as follows-

(a) a body outside the Bailiwick whose functions correspond to those of the Financial Intelligence Service,

(b) a police officer (other than when assigned to, or otherwise acting as a member of, the Financial Intelligence Service),

(c) an administrative or law enforcement agency outside the Bailiwick whose functions include the combating of financial crime,

- (d) the Commission or a body in another country or territory which carries out any similar function to the Commission,
- (e) the Alderney Gambling Control Commission,
- (f) the Director of the Revenue Service,
- (g) Her Majesty's Procureur,
- (h) the Registrar of Beneficial Ownership of Legal Persons within the meaning of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,
- (i) the Registrar of Companies within the meaning of the Companies (Guernsey) Law, 2008,
- (j) the Registrar of Limited Liability Partnerships within the meaning of the Limited Liability Partnerships (Guernsey) Law, 2013,
- (k) the Registrar of Foundations within the meaning of the Foundations (Guernsey) Law, 2012,
- (l) Her Majesty's Greffier,

- (m) the Registrar within the meaning of the Companies (Alderney) Law, 1994,
- (n) the Registrar within the meaning of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
- (o) the Registrar of Non Profit Organisations within the meaning of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008,
- (p) the Registrar of Non Profit Organisations within the meaning of the Charities and Non Profit Organisations (Registration) (Sark) Law, 2010, and
- (q) a government department within the meaning of section 7.

(6) Subject to subsection (7), references in this section to knowledge or suspicion of criminal conduct include knowledge or suspicion that certain property is or is derived from the proceeds of criminal conduct.

(7) References in this section to criminal conduct and the proceeds of criminal conduct do not include terrorist financing, terrorist property or property derived from terrorist property within the meaning of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

(8) The Committee for Home Affairs may by regulations prescribe any report for the purposes of this section which appears to the Committee to be reasonably necessary or expedient for the proper discharge by the Financial Intelligence Service of its functions."

(5) In section 17, for the words "Financial Investigation Unit" wherever they appear, substitute "Economic Crime Division".

Extent.

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

Citation.

3. This Ordinance may be cited as the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2018.

Commencement.

4. This Ordinance shall come into force on the 14th December, 2018.