

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE TERRORISM AND CRIME (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 Terrorism and Crime (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 a number of amendments to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("the "2002 Law").

Section 1(3) amends the definition of "purposes of terrorism" at section 1A of the 2002 Law to include travelling to take part in acts of terrorism abroad.

Section 1(4) amends section 3 of the 2002 Law, which deals with proscribed organisations. The effect of this amendment, taken with other amendments in the Ordinance, is to ensure that the list of proscribed organisations for the purposes of Bailiwick law remains consistent with that in the UK.

Section 1(5) introduces a new section 11A into the 2002 Law which creates a specific offence of making payments under a contract of insurance in response to terrorist demands. There is a related amendment at section 1(8), to bring the new offence at section 11A within the scope of the forfeiture provisions at section 18 of the 2002 Law.

Section 1(7) introduces a new section 15D 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. This new power is similar to the regulation-making power the Committee currently has in respect of suspicious activity reports made to it by persons in the course of a business.

In addition, there are technical amendments to the 2002 Law at subsections 1(6) and (11). The effect of these amendments is to insert a definition of the Committee into section 15C of the 2002 Law for ease of reference, and to ensure that the definition of

"cash" is the same as that in the Cash Controls (Bailiwick of Guernsey) Law, 2007, to ensure consistency across the legal framework.

The opportunity has also been taken to make a further technical amendment at section 1(9) 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 Terrorism and Crime (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 81A and 82 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Law.

1. (1) The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("**the Law**") is amended as set out below.

(2) For the words "8 to 11" wherever they appear, substitute "8 to 11A".

(3) In section 1A, after subsection (3), insert the following -

“(4) Without prejudice to the generality of subsections (1) and (3), "purposes of terrorism" also includes travel by any individual to a state or territory (other than his or her state or territory of residence) for the purposes of participation in terrorism (including, for the avoidance of doubt,

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

^b No. XVI of 2002; No. XIII of 2006; No. XIII of 2010; No. XI of 2011 and No. XIV of 2012; Ordinance No. I of 2000; Ordinance No. XXXIII of 2003; Ordinance No. VII of 2005; Ordinance No. XLVI of 2007; Ordinances Nos. XIII, XX and XXXVI of 2010; Ordinances Nos. XXIX and LIV of 2014 and No. IX of 2016; GSI No. 41 of 2005; GSI Nos 16 of 2003 and 5 of 2017.

the perpetration, planning, preparation of or participation in acts of terrorism, the provision or receiving of training in or for acts of terrorism, and the provision of support of any kind to a person involved in terrorism).".

(4) In section 3 -

- (a) for "Schedule 1" in subsection (1)(a), substitute "Schedule 2 of the Terrorism Act 2000 (**the UK Schedule**)",
- (b) for "Schedule 1" in subsection (2), substitute "the UK Schedule", and
- (c) delete subsections (3) to (5).

(5) After section 11, insert the following -

"Insurance against payments made in response to terrorist demands."

11A. (1) A person who is an insurer under an insurance contract commits an offence if –

- (a) the insurer makes a payment under the contract, or purportedly under it,
- (b) the payment is made in respect of any money or other property that has been, or is to be, transferred in response to a demand made wholly or partly for the purposes of terrorism, and

- (c) the insurer, or the person authorizing the payment on the insurer's behalf, knows or has reasonable cause to suspect that the money or other property has been, or is to be, transferred in response to such a demand.

(2) In subsection (1), "**insurance contract**" means a contract under which one party accepts significant insurance risk from another party (the "**policy holder**") by agreeing to compensate the policy holder if a specified uncertain future event affects the policy holder.

(3) This section applies to any payment made by an insurer on or after the day on which this section comes into force, even if the payment is made -

- (a) under, or purportedly under, a contract entered into before that day, or
- (b) in respect of money or other property transferred within the period of 40 days ending on that day.

(4) Where a legal person is guilty of an offence under this section, 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 -

- (a) any director, manager, secretary or other

similar officer, or any foundation official, of the legal person, or

- (b) any person purporting to act in any such capacity,

that person as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(5) Where the affairs of a legal person are managed by its members, subsection (4) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director.

(6) Where an offence under this section is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in (a) or (b),

that partner, officer, member or person, as the case may be, as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(7) Where an offence under this section is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(8) A fine imposed on an unincorporated body on its conviction of an offence under this section shall be paid from the funds of that body."

(6) In section 15C, after the words "States of Guernsey Committee for Home Affairs", insert "("**Committee for Home Affairs**")".

(7) After section 15C insert the following -

"Information following other reports.

15D. (1) The Committee for Home Affairs may by regulations prescribe such matters as are reasonably necessary or expedient for the purposes of obtaining information in respect of any report within this section.

(2) Sections 15C(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 15C or 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 has reasonable grounds to believe –

- (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 terrorist financing 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 (7).

(5) The parties within this subsection are -

(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 Guernsey Financial Services Commission or a body in another country or territory which carries out any similar function to the Guernsey Financial Services Commission,

(e) the Alderney Gambling Control Commission,

(f) the Director of the Revenue Service within the meaning of the Income Tax (Guernsey) Law, 1975,

(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 of the Disclosure (Bailiwick of
Guernsey) Law, 2007.

(6) References in this section to knowledge or suspicion of
terrorist financing include knowledge or suspicion that certain property is
or is derived from terrorist property.

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

(8) In section 18, after subsection (5), insert the following
subsection -

"(5A) Where a person is convicted of an offence under
section 11A, the court may order the forfeiture of the amount paid under, or
purportedly under, the insurance contract."

(9) In section 79 -

(a) for the words "Financial Investigation Unit" wherever they appear, substitute "Economic Crime Division", and

(b) delete the full stop at the end of the definition of vehicle and substitute ",

and references to the Terrorism Act 2000 are references to that Act as amended, re-enacted (with or without modification), extended or applied."

(10) Delete Schedule 1.

(11) In Schedule 3, for paragraph 1(2), substitute the following subparagraph -

"(2) "**Cash**" has the same meaning as in the Cash Controls (Bailiwick of Guernsey) Law, 2007."

Extent.

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

Citation.

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

Commencement.

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