

# **BILLET D'ÉTAT No. XX, 2013**

**30<sup>th</sup> OCTOBER 2013**

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# PROJET DE LOI

ENTITLED

## **The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013**

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# PROJET DE LOI

ENTITLED

## **The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> July, 2011<sup>a</sup> and of the 30th October, 2013<sup>b</sup>, 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

#### RELEVANT OFFENCES

##### **Relevant offences to which this Law applies.**

1. (1) The offences to which this Law applies ("**relevant offences**") are –

- (a) the customary law offences of rape, indecent assault, and indecent exposure,
- (b) an offence under article 1 (*inceste* committed by a man), article 3 (an attempt to commit *inceste*) or

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<sup>a</sup> Article IX of Billet d'État No. XIII of 2011.

<sup>b</sup> Article \* of Billet d'État No. \*\* of 2013.

article 5 (*inceste* committed by a woman) of the *Loi pour la punition d'inceste* 1909<sup>c</sup>,

- (c) an offence under article 1 (being involved in the corruption of a girl or woman), 1(2)(i) (menacing or intimidating a girl or woman to have unlawful sexual intercourse), article 1(2)(ii) (using false pretences or false representations to cause a girl or woman to have unlawful sexual intercourse), article 1(2)(iii) (applying, administering or making a girl or woman take drugs for the purpose of having unlawful sexual intercourse), article 2 (having or attempting to have sexual intercourse with a girl aged under 13 years), article 3(a) (having or attempting to have sexual intercourse with a girl aged over 13 years but under 16 years), article 3(b) (having or attempting to have sexual intercourse with a girl or woman of unsound mind), article 4 (permitting girls aged under 16 years to frequent premises for the purpose of unlawful sexual intercourse), article 5 (abducting a girl aged under 18 years for an immoral purpose), article 6 (detaining a girl or woman against her wishes), article 9(a) (living on the earnings of prostitution), article 9(b) (persistently soliciting or importuning in a public place for an immoral purpose), article 12 (controlling etc. the movements of a prostitute), or article 13 (kidnapping by impersonating the husband of a

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<sup>c</sup> Ordres en Conseil Vol. IV, p.288.

married woman) of the *Loi relative à la Protection des Femmes et des Filles mineures* 1914<sup>d</sup>,

- (d) except as provided by subsection (2), an offence under article 1 (*sodomie*), article 2 (assault with intent to commit *sodomie* or indecent assault on a male) or article 3 (gross indecency with a male) of the *Loi relative à la Sodomie* 1929<sup>e</sup>,
- (e) an offence under section 4 (procuring a man to commit buggery), section 5 (living on the earnings of male prostitution) or article 6 (permitting the use of premises for lewd homosexual practices) contrary to the Sexual Offences (Bailiwick of Guernsey) Law, 1983<sup>f</sup>,
- (f) an offence under section 1 (gross indecency with a child) or section 3(1) (taking, distributing or possessing etc., indecent photographs of children) of the Protection of Children (Bailiwick of Guernsey) Law, 1985<sup>g</sup>,

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<sup>d</sup> Ordres en Conseil Vol. V, p.74.

<sup>e</sup> Ordres en Conseil Vol. VII, p.273.

<sup>f</sup> Ordres en Conseil Vol. XXVIII, p. 316; Vol. XXXI, p. 278 and Vol. XL, p. 93; Order in Council No. XVII of 2012. See also Ordres en Conseil Vol. XXXVI, p. 639; and Recueil d'Ordonnances Tome XXIII, p. 472.

<sup>g</sup> Ordres en Conseil Vol. XXIX, p.103; Vol. XXXIII, p. 49 and Vol. XLIII(1), p. 3; Order in Council No. XIII of 2006.

- (g) an offence under article 3 of the Import and Export (Control) (Guernsey) Law, 1946<sup>h</sup> in so far as the offence relates to goods prohibited to be imported under article 4 of the Import and Export of Goods (Guernsey) Order, 1990<sup>i</sup> that are indecent photographs of persons who are or appear to be aged under 16 years,
- (h) an offence under section 9(1)(a) (burglary with intent to rape a woman) or section 10 (aggravated burglary where the burglary is with intent to rape a woman) of the Theft (Bailiwick of Guernsey) Law, 1983<sup>j</sup>,
- (i) an offence under section 23 (breach of risk of sexual harm order, interim risk of sexual harm order or prescribed order) of this Law, and
- (j) an offence under section 25 (conviction in the Bailiwick for an act committed outside the Bailiwick by a person ordinarily resident in the Bailiwick) of this Law.

(2) The States may by Ordinance amend subsection (1) by adding, amending or deleting any offence.

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<sup>h</sup> Ordres en Conseil Vol. XII, p. 334.

<sup>i</sup> G.S.I. No. 24 of 1990.

<sup>j</sup> Ordres en Conseil Vol. XXVIII, p. 5; Vol. XXXI, p. 278; Vol. XXXIII, p. 49; Vol. XXXVI, p. 639; Vol. XXXIX, p. 277 and Vol. XLI, pp. 452 and 515.



PART II  
NOTIFICATION

**Persons who are subject to notification requirements of this Law.**

2. (1) A person who is convicted of a relevant offence before a court becomes subject to the notification requirements of this Law upon conviction.

(2) A person who, in a prescribed jurisdiction, is subject to prescribed notification requirements and who enters the Bailiwick -

(a) becomes subject to the notification requirements of this Law upon entering the Bailiwick, and

(b) remains subject to those requirements during the continuance of the prescribed notification requirements.

(3) Subject to subsection (4), if, when sentencing or otherwise dealing with a person in respect of an offence, a court certifies that the offence was sexually aggravated, the offender thereupon becomes subject to the notification requirements of this Law.

(4) A court must not certify that an offence was sexually aggravated unless it is satisfied, on the information available to it -

(a) that at, before or after the time of committing the offence the offender's actions included a sexual element directly connected with the commission of the offence, and

- (b) that the offender poses a risk of sexual harm to the public or any particular person or persons.

(5) A person who is cautioned for a relevant offence becomes subject to the notification requirements of this Law upon receipt of that caution.

(6) A person in respect of whom a court makes -

- (a) a sexual offences prevention order under section 18,
- (b) a foreign travel order under section 20, and
- (c) a risk of sexual harm order under section 22,

who was not a person subject to the notification requirements of this Law immediately before the making of the order becomes subject to the notification requirements of this Law upon the order being made.

(7) A person ceases to be subject to the notification requirements of this Law -

- (a) if the conviction or, as the case may be, the relevant order or action of the court is quashed or reversed on appeal,
- (b) where the person is a person to whom subsection (1), (3) or (5) applies, when in accordance with Part III, the Chief Officer of Police determines or the Magistrate's Court orders that the person should not remain subject to the notification requirements, or

- (c) where the person is a person to whom subsection (6) applies, when the sexual offences prevention order, the risk of sexual harm order or foreign travel order (as renewed from time to time) ceases to have effect.

(8) For the purposes of subsection (2), "**prescribed notification requirements**" means notification requirements imposed under the law of a prescribed jurisdiction, being notification requirements of a type prescribed that are substantially the same as the notification requirements under this Law.

(9) A person for the time being subject to the notification requirements of this Part is referred to in this Law as a "**notifier**".

### **Notification period.**

3. (1) A court which sentences a person for a relevant offence must specify the minimum period during which that person is subject to the notification requirements.

(2) Where a court certifies under section 2(3) that an offence was sexually aggravated, the court must, at that time, specify the minimum period for which the person is subject to the notification requirements.

(3) Unless the court is satisfied that there is a reason why a shorter period would be appropriate, the minimum period specified under subsection (1) or (2) must be a period of at least 5 years, being a period that the court is satisfied takes into account -

- (a) the likelihood of the person re-offending, and

- (b) the seriousness of any offence likely to be committed by the person.

(4) Where a person becomes subject to the notification requirements of this Law by being cautioned, the minimum period during which that person is subject to those requirements is a period of 2 years.

(5) Where a court makes an order by which a person becomes subject to the notification requirements pursuant to section 2(6), the period during which the person shall be subject to those requirements is the period of that order.

**Notification requirements.**

**4.** (1) The notifier must notify an authorised officer of the following information at the time of notification -

- (a) every name the notifier uses,
- (b) the notifier's home address,
- (c) any other address in the Bailiwick -
  - (i) if the notifier intends to remain in the Bailiwick for less than 7 days, at which the notifier intends to reside or stay,
  - (ii) in any other case, at which the notifier regularly resides or stays,
- (d) any other address in the Bailiwick at which the notifier has resided or stayed for a qualifying period,

- (e) the notifier's date of birth,
  - (f) the notifier's social insurance number and, where the notifier does not reside in the Bailiwick, all other equivalent identification numbers relating to the notifier issued by a jurisdiction in the British Islands, and
  - (g) any other prescribed information.
- (2) The notification must be given -
- (a) in the case of a notifier to whom section 2(1) applies, within a period of 24 hours commencing when the court convicts the notifier,
  - (b) in the case of a notifier to whom section 2(2) applies, within a period of 24 hours commencing when the notifier enters the Bailiwick,
  - (c) in the case of a notifier to whom section 2(3) applies, within a period of 24 hours commencing when the court certifies that the offence was a sexually aggravated offence,
  - (d) in the case of a notifier to whom section 2(5) applies, within a period of 24 hours commencing when the notifier is cautioned,

- (e) in the case of a notifier to whom section 2(6) applies, within a period of 24 hours commencing when the court makes the sexual offences prevention order, a risk of sexual harm order or a foreign travel order,
- (f) in the case of a notifier to whom subsection (6) applies-
  - (i) if an authorised officer attends the place where the notifier is detained to receive the notification, at the time the authorised officer so attends, or
  - (ii) if an authorised officer does not so attend, within a period of 24 hours commencing when the notifier ceases to be detained or is discharged from the approved establishment,

and on each anniversary of the day on which the notifier first gave notification.

- (3) The notifier must also notify an authorised officer -
  - (a) if the notifier uses a name that has not been notified to an authorised officer under this section within 24 hours of the notifier's first use of the name,
  - (b) of any change in the notifier's home address or his having stayed for a qualifying period at any other residence in the Bailiwick that has not been notified to an authorised officer -

- (i) if the notifier has prior knowledge of the change, at least 24 hours before the change, if this is possible, or
- (ii) in any other case, as soon as reasonably practicable but, in any event, within the 24 hours after the change.

(4) There is to be disregarded when determining the period mentioned in subsection (3)(a) or (b) any time during which the notifier -

- (a) is in custody on remand,
- (b) is serving a sentence of imprisonment or youth detention,
- (c) is detained in an approved establishment in accordance with Part IX of the Mental Health Law, or
- (d) is outside the Bailiwick.

(5) The court before which a notifier has been convicted of a relevant offence may order that the notifier be detained following the conviction until notification under subsection (1) has been given to an authorised officer.

(6) Notwithstanding subsection (2)(a) to (e), if a notifier to whom this section applies is, on a day notification is required to be given under any of those paragraphs -

- (a) in custody on remand,
- (b) serving a sentence of imprisonment or youth detention,  
or
- (c) detained in an approved establishment in accordance  
with Part IX of the Mental Health Law,

the notifier must instead give notification under subsection (2)(f).

(7) If a notifier, required to give notification on an anniversary mentioned in subsection (2), is on that day -

- (a) in custody on remand,
- (b) serving a sentence of imprisonment or youth detention,
- (c) detained in an approved establishment in accordance  
with Part IX of the Mental Health Law, or
- (d) outside the Bailiwick,

the notifier must instead give notification within a period of 24 hours commencing when the notifier ceases to be detained, is discharged from the approved establishment or returns to the Bailiwick, as the case may be.

(8) Except as provided by subsection (2)(f)(i), a person must give notification under this Article to an authorised officer by attendance at the place designated by the Chief Officer of Police.



(9) An authorised officer must give a written acknowledgement of notification given under this section.

(10) A notifier who -

- (a) fails, without reasonable excuse, to comply with subsection (2), (3) or (7), or
- (b) in purported compliance with any of those subsections, provides information that the notifier knows to be false or misleading,

is guilty of an offence and liable -

- (i) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(11) For the purposes of this section, a "**qualifying period**" means-

- (a) a period of at least 7 days, or
- (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

**Additional requirements.**

**5.** (1) A notifier giving notification must, if requested to do so by an authorised officer, allow an authorised officer to take -

- (a) the fingerprints,
- (b) photographs, and
- (c) a DNA sample (by way of a non-intimate sample),

of the person.

(2) A fingerprint or a DNA profile derived from a DNA sample taken under subsection (1)(c) may be used -

- (a) to verify the identity of the notifier, and
- (b) to check -
  - (i) the fingerprint against any other fingerprint, or
  - (ii) the DNA profile against any other DNA profile,

which is -

- (A) held in connection with or as a result of an investigation of an offence,

(B) contained in records held by the Guernsey Police, or

(C) contained in any similar records held by or on behalf of any relevant law enforcement agency.

(4) A notifier must also, if requested to do so by an authorised officer, provide documentary evidence of the notifier's identity.

(5) An authorised officer may submit documentary evidence supplied under subsection (4) to a relevant person for verification by the records held by the government department in which the relevant person works.

(6) The relevant person may supply an authorised officer with the verification requested.

(7) Except as provided by subsection (8), the supply of information under this section is not to be taken to breach any restriction on the disclosure of information (however arising or imposed).

(8) This section does not –

(a) authorize the doing of anything that contravenes the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>k</sup>, or

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<sup>k</sup> Orders in Council Vol. XLII(1), p.51; Ordinance No. II of 2010; No. XXXIV of 2011 and No. XLIX of 2012.

- (b) affect a power to supply information that exists apart from this section.

(9) A person who -

- (a) fails, without reasonable excuse, to comply with subsection (1) or (4),
- (b) in purported compliance with subsection (4), supplies documentary evidence the person knows to be false or misleading, or
- (c) hinders or obstructs an authorised officer acting under subsection (1) or (4),

is guilty of an offence and is liable -

- (i) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(10) For the purposes of this section -

**"department of the States of Guernsey"** means any department or committee (however called) of the States of Guernsey, and includes the Policy Council,

**"DNA profile"** means any information derived from a DNA sample,

**"DNA sample"** means any material that has come from a human body and consists of or includes human cells,

**"fingerprint"** and **"non-intimate sample"** have the same meanings as found in section 91(3) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>I</sup>,

**"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.

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<sup>I</sup> Ordres en Conseil Vol. XLIII(2), p. 617; Order in Council No. XVI of 2009; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 617 and Ordinance No. XXIX of 2011. See also Ordres en Conseil Vol. XXII, p. 122; Order in Council No. III of 2005 and Nos. XIV, XXVIII and XVIII of 2009.

"**relevant law enforcement agency**" has the same meaning as found in section 70(2) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, and

"**relevant 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 verify documentary evidence for the purposes of this Law,

(b) in Alderney, the Chief Executive of the States of Alderney, and

(c) in Sark, a person appointed by the General Purposes and Advisory Committee of the Chief Pleas of Sark to verify documentary evidence for the purposes of this Law.

**Travel outside the Bailiwick.**

6. (1) The Department may by regulations make provision requiring notifiers who leave the Bailiwick -

- (a) before they leave, to give in accordance with the regulations, a notification under subsection (2), and
- (b) if they subsequently return to the Bailiwick, to give in accordance with the regulations a notification under subsection (3).

(2) A notification under this subsection must disclose -

- (a) the date on which the notifier will leave the Bailiwick,
- (b) the place (or, if there is more than one, the first place) to which the notifier will travel and the notifier's point of arrival (determined in accordance with the regulations) in the country or territory where the place is situated, and
- (c) any other information prescribed by the regulations, including but not limited to, information in relation to-
  - (i) the notifier's departure from the Bailiwick,
  - (ii) the notifier's movements while outside the Bailiwick,

- (iii) any place to which the notifier intends to travel while outside the Bailiwick, and

- (iv) the notifier's intended return to the Bailiwick.

(3) A notification under this subsection must disclose -

- (a) any information regarding any place to which the notifier travelled while outside the Bailiwick, and

- (b) any other information prescribed by the regulations, including but not limited to, information in relation to-

- (i) the notifier's movements while outside the Bailiwick, and

- (ii) the notifier's return to the Bailiwick.

(4) Regulations under subsection (1) may make different provision for different categories of notifiers.

(5) A person who -

- (a) fails, without reasonable excuse, to give a notification in compliance with regulations made under subsection (1) when required to do so by those regulations, or

- (b) in purported compliance with regulations made under subsection (1), provides information that the person knows to be false or misleading,



is guilty of an offence and is liable -

- (i) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

**Parental responsibility in relation to notifiers aged under 18.**

7. (1) Where a notifier -

- (a) has not attained 18 years of age, and
- (b) has become subject to the notification requirements pursuant to section 2(1), (3) or (6),

the notification requirements may take effect if the court so orders as if they had been imposed on a specified person having parental responsibility for the notifier.

(2) Where a person with parental responsibility specified under subsection (1) attends the place designated by the Chief Officer of Police in order to give notification, that person must ensure that the notifier also attends.

(3) Where subsection (1) applies and the notifier subsequently attains 18 years of age, the notification requirements will no longer take effect as if they had been imposed on the specified person.

(4) For the purposes of this section, a person having parental responsibility in respect of a notifier -

- (a) in Guernsey and Alderney, is a person who has parental responsibility for the notifier in accordance with the Children (Guernsey and Alderney) Law, 2008<sup>m</sup>, and
- (b) in Sark, is a person who is the parent or guardian of the notifier.

(5) Where -

- (a) the court has made an order under subsection (1), and
- (b) the specified person -
  - (i) fails to comply with , or
  - (ii) provides information that the person knows to be false or misleading in purported compliance with,

any provision of this Law with which the notifier would otherwise be required to comply,

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<sup>m</sup> Order in Council No. XIV of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, pp. 480 and 709.

that person may be proceeded against and sentenced as if he was the notifier.

**Powers to search.**

**8.** (1) Where it appears to the Bailiff on information on oath that there is reasonable cause to believe that -

- (a) the home address of a notifier is not the home address last notified by the person under section 4, and
- (b) apart from searching premises, there are no other practical means of establishing the notifier's home address,

he may issue a warrant authorizing a police officer -

- (i) to enter the premises specified in the warrant, and
- (ii) to search the premises to ascertain the home address of the notifier.

(2) Where it appears to the Bailiff on information on oath that there is reasonable cause to suspect that there is at the home address of a notifier a person who is at risk of harm from that notifier, he may issue a warrant authorizing a police officer -

- (a) to enter the premises specified in the warrant, being the home address of the notifier, and

- (b) to search those premises to ascertain if there is on the premises a person who is at risk of harm from the notifier.

(3) Where it appears to the Bailiff on information on oath that there is reasonable cause to suspect that there is at -

- (a) the home address of a notifier, or
- (b) any other address notified by him under section 4(1)(c),

any object which he is not permitted to possess in accordance with an order made under Part IV, he may issue a warrant authorizing a police officer -

- (i) to enter the premises specified in the warrant, being the home address of the notifier or any other address notified by him, and
- (ii) to search those premises to ascertain if there is on the premises any such object.

(4) A person who intentionally obstructs or hinders a police officer in the exercise of the officer's powers or duty is guilty of an offence and is liable on summary conviction to imprisonment for a term of 12 months and to a fine of level 4 on the uniform scale.

**Information about release or transfer.**

9. (1) The States may by Ordinance may make such provision as they think fit in respect of the information that must be given by the person who is responsible for a notifier -

- (a) serving a period of detention, or
- (b) who is detained in an approved establishment in accordance with Part IX of the Mental Health Law,

to persons listed in the Ordinance of any occasion when the notifier will imminently be released or discharged, or a different person becomes responsible for the notifier.

(2) An Ordinance made under subsection (1) may require the person who is responsible for the notifier to provide any information or photographs of the notifier.

(3) For the purposes of subsection (1) -

- (a) "**detention**" includes imprisonment and youth detention,
- (b) "**discharged**" includes being given leave of absence under section 36 of the Mental Health Law, as modified by the Second Schedule to that Law, and
- (c) "**released**" includes being released temporarily on an unsupervised basis.

PART III  
REVIEW OF NOTIFICATION REQUIREMENTS

**Interpretation.**

**10.** For the purposes of this Part -

- (a) **"an application for review"** means an application by a relevant notifier that he should not be subject to the notification requirements,
- (b) **"the qualifying date"** is the day after the end of the minimum period specified under section 3, calculated from the first day on which the relevant notifier gives the relevant notification,
- (c) **"a relevant notifier"** is a notifier who, on the relevant date, is subject to notification requirements,
- (d) **"the relevant date"** means the date on which the relevant notifier makes an application for review,
- (e) **"the relevant notification"** means the first notification which the notifier gives under section 4 when -
  - (i) he is first released after being remanded in custody in relation to the conviction for the offence giving rise to the notification requirements,

- (ii) he is first released after serving a sentence of imprisonment or youth detention in relation to that conviction,
  - (iii) he is first released after being detained in an approved establishment in accordance with Part IX of the Mental Health Law, in relation to that conviction, or
  - (iv) in any other case, he is first required to do so for the purposes of Part II, and
- (f) a "**relevant body**" means -
- (i) the Probation Service, or
  - (ii) the States Prison.

**Application for review.**

**11.** (1) A relevant notifier may apply to the Chief Officer of Police for a determination that he should no longer be subject to the notification requirements ("**an application for review**").

(2) An application for review must be made in the prescribed form and may be made on or after the qualifying date.

(3) The Chief Officer of Police within 14 days of receipt of an application for review -

- (a) must give an acknowledgment of receipt of the application to the relevant notifier, and
- (b) may notify a relevant body that the application has been made.

(4) Where a relevant body is notified of the application for review under subsection (3)(b) and holds information which it considers to be relevant to the application, the relevant body must give such information to the Chief Officer of Police within 28 days of receipt of the notification.

**Determination of application for review.**

**12.** (1) The Chief Officer of Police must, within 6 weeks of the latest date on which a relevant body to which a notification has been given under section 11(3)(b) may give information under section 11(4) -

- (a) determine the application for review, and
- (b) give notice of the determination to the relevant notifier.

(2) For the purposes of the determination of an application for review under this section, a relevant notifier must satisfy the Chief Officer of Police that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the relevant notifier to remain subject to the notification requirements.

(3) If the Chief Officer of Police determines under this section that the relevant notifier should remain subject to the notification requirements, the notice of the determination must -



- (a) contain a statement of reasons for the determination, and
- (b) inform the relevant notifier that he may appeal the determination in accordance with section 15.

(4) If the Chief Officer of Police determines under this section that a relevant notifier should not remain subject to the notification requirements, the relevant notifier ceases to be subject to the notification requirements on the date of receipt of the notice of determination.

(5) The Chief Officer of Police shall have no obligation to consider an application for review where -

- (a) the application for review is a further application (that is to say, an application which relates to a relevant notifier in respect of whom a previous application has been received by the Chief Officer of Police),
- (b) in the opinion of the Chief Officer of Police, that further application discloses no significant change in any material circumstances concerning the relevant notifier, and
- (c) within the period of 12 months immediately preceding receipt of the further application a previous application has been determined by the Chief Officer of Police.

(6) The Department may by regulations amend the period in subsection (5)(c).

**Factors applying to a determination under section 12.**

13. In determining an application for review, the Chief Officer of Police must -

- (a) have regard to -
  - (i) information which is held by the Guernsey Police, and
  - (ii) information (if any) received from a relevant body, and
- (b) consider the risk of sexual harm posed by the relevant notifier and the effect of a continuation of the notification requirements on the relevant notifier,

and may consider such other matters which he considers to be appropriate.

**Determination where no application has been made.**

14. (1) At any stage on or after the qualifying date, the Chief Officer of Police may, if he sees fit, proceed to determine whether a notifier should be subject to the notification requirements in accordance with this Part, as if he had received such an application.

(2) Where the Chief Officer of Police proceeds in accordance with subsection (1) -

- (a) he shall have the powers and duties, and
- (b) any responsible body shall have the duties,

that he or it would have had if an application had been made by the relevant notifier for him to determine whether the relevant notifier should remain subject to the notification requirements.

(3) Where the Chief Officer of Police determines that a relevant notifier should remain subject to the notification requirements, the relevant notifier may appeal to the Magistrate's Court in accordance with section 15.

### **Appeals.**

**15.** (1) A relevant notifier may appeal to the Magistrate's Court against a determination of the Chief Officer of Police -

- (a) within the period of 21 days beginning with the day of receipt of the notice of determination, and
- (b) in such manner as may be prescribed by order of the Royal Court.

(2) If the Magistrate's Court makes an order that a relevant notifier should not remain subject to the notification requirements, the relevant notifier ceases to be subject to the notification requirements on the date of the order.

### **Guidance.**

**16.** (1) The Department may issue guidance to the Chief Officer of Police in relation to the determination by him of applications made under section 11.

(2) The Department may, from time to time, revise any guidance issued under subsection (1).

(3) The Department must arrange for any guidance issued or revised under this section to be published in such manner as the Department considers appropriate.

## PART IV COURT ORDERS

### Interpretation of this Part.

17. (1) For the purposes of this Part -

- (a) a "**child**" means a person who has not attained the age of 16,
- (b) an "**offender**" means a person who -
  - (i) has been convicted, before or after the commencement of this section, of a relevant offence,
  - (ii) outside the Bailiwick, has been convicted, before or after the commencement of this section, of an offence that would, if the offence had been committed in the Bailiwick, have constituted a sexual offence to which this Law applies,

- (iii) has been convicted of an offence that a court has certified, under section 2(3), was sexually aggravated, or
- (iv) outside the Bailiwick, has been convicted of an offence, before or after the commencement of this section, that a court has certified under subsection (2) was sexually aggravated.

(2) A court may for the purpose of subsection (1)(b)(iv), on the application of Her Majesty's Procureur, certify that the offence was sexually aggravated if the court is satisfied -

- (a) that the offence was sexually motivated, or
- (b) that at, before or after the time of committing the offence the offender's actions included a sexual element directly connected with the commission of the offence.

**Sexual offences prevention orders.**

**18.** (1) Where a court is satisfied on the balance of probabilities, on the application of Her Majesty's Procureur, that an offender poses a threat of -

- (a) sexual harm to children in general or to a particular child or children, or
- (b) serious sexual harm to the public or any particular person or persons,

the court may make a sexual offences prevention order in respect of the offender as it is satisfied is necessary to protect -

- (i) children in general or any particular child or children from sexual harm from the offender, or

- (ii) the public or any particular person or class of person from serious sexual harm from the offender.

(2) An application under this section may be made -

- (a) where an order may be made by the Magistrate's Court upon conviction or sentencing for an offence pursuant to section 17(1)(b)(i) or (iii), that court, or

- (b) in any other case, the Royal Court.

(3) A sexual offences prevention order may -

- (a) prohibit the offender from doing anything described in the order, and

- (b) require the offender to do anything described in the order.

(4) Notwithstanding the generality of subsection (3)(a), a sexual offences prevention order may, in particular, prohibit the offender from undertaking

any work or other activity that may require or be likely to allow the offender to come into contact or be associated with -

- (a) a specific child or children, or children in general, or
- (b) a specific person who may be vulnerable to sexual exploitation or any description of persons the court considers may be vulnerable to sexual exploitation by the offender.

(5) If an application for a sexual offences prevention order has not been determined, Her Majesty's Procureur may apply to the court for an interim sexual offences prevention order.

(6) The court may, if it considers it just to do so, make an interim sexual offences prevention order in respect of the offender, as it is satisfied is necessary to protect -

- (a) children in general or any particular child or children from sexual harm from the offender, or
- (b) the public or any particular person or class of person from serious sexual harm from the offender.

(7) An interim sexual offences order -

- (a) may prohibit the offender from doing anything described in the order,

- (b) may require the offender to do anything described in the order,
- (c) has effect only for a fixed period, specified in the order, and
- (d) ceases to have effect, if it has not already done so, on the determination of the main application.

**Sexual offences prevention orders: further provisions.**

**19.** (1) A sexual offences prevention order or an interim sexual offences prevention order ("**a section 18 order**") shall have effect during the period specified in it or, if that period is subsequently amended, during the amended period.

(2) Unless the court is satisfied that there is a particular reason why a shorter period would be appropriate, the first period mentioned in subsection (1) in respect of a sexual offences prevention order must be a period of at least 5 years.

(3) A court may amend a section 18 order on the application of Her Majesty's Procurer or the offender, and any amendment of an order may, in particular, extend or shorten the period specified in the order.

(4) If the offender, without reasonable excuse -

- (a) does anything that the offender is prohibited from doing by a section 18 order, or



- (b) fails to do anything that the offender is required to do by a section 18 order,

the offender is guilty of an offence and is liable -

- (i) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(5) If, in the Bailiwick, a person, without reasonable excuse -

- (a) does anything that the person is prohibited from doing in a prescribed jurisdiction by a prescribed order made by a court in that jurisdiction, or
- (b) fails to do anything the person is required to do in a prescribed jurisdiction by a prescribed order made by a court in that jurisdiction,

the person is guilty of an offence and is liable -

- (i) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

- (ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(6) In subsection (5), "**prescribed order**" means an order of a type prescribed by the Department -

- (a) that can be made by a court in a prescribed jurisdiction in the same or substantially the same circumstances, and
- (b) that has the same or substantially the same effect, as a sexual offences prevention order.

**Foreign travel orders.**

**20.** (1) Her Majesty's Procureur may apply to the Royal Court for a foreign travel order in respect of an offender.

(2) On an application made under subsection (1), the Court may make a foreign travel order if it is satisfied on the balance of probabilities that the offender's acts and behaviour makes it necessary to make such an order for the purpose of protecting children generally or any child from sexual harm from the offender outside the Bailiwick.

(3) A foreign travel order has effect for a fixed period specified in the order, which may not exceed 5 years.

(4) A foreign travel order may prohibit the offender from -

- (a) travelling to any place outside the Bailiwick named or described in the order,
- (b) travelling to any place outside the Bailiwick other than a place named or described in the order, and
- (c) travelling to any place outside the Bailiwick,

as is specified in the order.

(5) The only prohibitions that may be included in a foreign travel order are those necessary for the purpose of protecting children generally or any child from sexual harm from the offender outside the Bailiwick.

(6) If an application for a foreign travel order has not been determined, Her Majesty's Procureur may apply to the court for -

- (a) an interim foreign travel order, and
- (b) an order requiring the offender -
  - (i) to surrender his travel documents, and
  - (ii) not to apply for any further travel documents.

(7) The court may, if it considers it just to do so, make an interim foreign travel order in respect of the offender which -

- (a) may prohibit the offender from travelling as set out in subsection (4) as described in the order,

- (b) has effect only for a fixed period, specified in the order, and
- (c) ceases to have effect, if it has not already done so, on the determination of the main application.

(8) The court may, if it considers it just to do so, make an order under subsection (6)(b) which -

- (a) has effect only for a fixed period, specified in the order, and
- (b) ceases to have effect, if it has not already done so, on the determination of the main application.

(9) For the purposes of -

- (a) this section -
  - (i) "**children**" means persons who have not attained the age of 16 years, and
  - (ii) "**acts and behaviour**" includes acts and behaviour occurring before the commencement of this section,
- (b) subsection (6)(b), "**travel documents**" includes a passport, driving licence or other identification card or

document which is accepted in order to verify the identity of a person for the purpose of travel.

**Foreign travel orders: further provisions.**

**21.** (1) Her Majesty's Procureur or the offender may apply to the Royal Court for an order varying, renewing or discharging a foreign travel order or an interim foreign travel order ("**a section 20 order**").

(2) Subject to subsection (3), on an application under subsection (1), the Court may make any order varying, renewing or discharging the section 20 order that it considers appropriate.

(3) A section 20 order may be renewed or varied so as to impose additional prohibitions on the offender, only if it is necessary to do so for the purpose of protecting children generally or any child from serious sexual harm from the offender outside the Bailiwick.

(4) A person commits an offence if, without reasonable excuse, the person does anything which he is prohibited from doing by a section 20 order and is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(5) A person is not in breach of a section 20 order if, while the person is on a vessel or aircraft, the journey of the vessel or aircraft takes it outside

the Bailiwick so long as the vessel or aircraft does not, in the course of the journey, land at any place outside the Bailiwick.

(6) A person commits an offence if, without reasonable excuse, he -

(a) fails to surrender any travel document, or

(b) applies for any travel document,

in breach of an order made under section 20(6)(b) and is liable -

(i) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

### **Risk of sexual harm orders.**

**22.** (1) Her Majesty's Procureur may apply to the Royal Court for a risk of sexual harm order in respect of a person aged 15 or over ("**the defendant**")-

(a) who resides in the Bailiwick, or

(b) who Her Majesty's Procureur believes is in, or is intending to come, to the Bailiwick.

(2) The application may be made if it appears to Her Majesty's Procureur that -

- (a) the defendant has, whether before or after the commencement of this section, done an act mentioned in subsection (3), and
- (b) as a result of the act, there is reasonable cause to believe that it is necessary for a risk of sexual harm order to be made.

(3) The acts referred to in subsection (2) are -

- (a) engaging in sexual activity involving a child or in the presence of a child,
- (b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual,
- (c) giving a child anything that relates to sexual activity or contains a reference to such activity, or
- (d) communicating with a child, where any part of the communication is sexual.

(4) On the application, the Court may make the order if it is satisfied on the balance of probabilities that -

- (a) the defendant has, whether before or after the commencement of this section, done an act mentioned in subsection (3), and
- (b) it is necessary to make the order to protect children generally or any child from sexual harm from the defendant.

(5) A risk of sexual harm order -

- (a) prohibits the defendant from doing anything described in the order, and
- (b) has effect for a fixed period, of not less than 2 years, specified in the order or until further order.

(6) If an application for a risk of sexual harm order has not been determined, Her Majesty's Procureur may apply to the Royal Court for an interim risk of sexual harm order.

(7) The Court may, if it considers it just to do so, make an interim risk of sexual harm order, which -

- (a) prohibits the defendant from doing anything described in the order,
- (b) has effect only for a fixed period, specified in the order, and



- (c) ceases to have effect, if it has not already done so, on the determination of the main application.

(8) The only prohibitions that may be imposed by a risk of sexual harm order or an interim risk of sexual harm order are those necessary to protect children generally or any child from sexual harm from the defendant and, for the avoidance of doubt, may include a prohibition from travelling to a place outside the Bailiwick.

(9) In this section, "**image**" means an image produced by any means, whether of a real or imaginary subject.

**Risk of sexual harm orders: further provisions.**

**23.** (1) Her Majesty's Procureur or the defendant may apply to the Royal Court for an order varying, renewing or discharging a risk of sexual harm order or an interim risk of sexual harm order ("**a section 22 order**").

(2) On an application under subsection (1), the Court may make any order varying, renewing or discharging a section 22 order that the Court considers appropriate.

(3) A section 22 order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so to protect children generally or any child from harm from the defendant.

(4) A person commits an offence if, without reasonable excuse, the person does anything which he is prohibited from doing by a section 22 order, and is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(5) A person commits an offence if, without reasonable excuse, the person does anything, in the Bailiwick, which he is prohibited from doing by a prescribed order made by a court in a prescribed jurisdiction, and is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(6) In subsection (5), "**prescribed order**" means an order of a type prescribed by the Department –

- (a) that can be made by a court in a prescribed jurisdiction in the same or substantially the same circumstances as a risk of sexual harm order, and
- (b) that has the same or substantially the same effect as a risk of sexual harm order.

#### **Miscellaneous.**

- 24.** (1) The States may by Ordinance amend this Part.

(2) For the avoidance of doubt, any proceedings in relation to the application, variation, renewal or discharge of an order made under this Part shall be deemed to be "criminal proceedings" for the purposes of section 9(1)(a) of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002.

## PART V OTHER CONVICTIONS

### **Acts done by residents of the Bailiwick outside the Bailiwick.**

**25.** (1) If -

- (a) after the commencement of this section, a person ordinarily resident in the Bailiwick does an act in a jurisdiction outside the Bailiwick,
- (b) the act constitutes an offence under the law in force in that jurisdiction, and
- (c) the act, if done in the Bailiwick, would constitute a sexual offence to which this Law applies,

the person is guilty in the Bailiwick of that sexual offence.

(2) Accordingly, the person may be proceeded against in the Bailiwick in respect of the sexual offence.

## PART VI APPEALS

**Appeals – general provisions.**

26. (1) An appeal under this Part shall be by way of a review and shall be made in accordance with section 27.

(2) On an appeal under this Part, the Royal Court or the Court of Appeal, as the case may be -

- (a) may make any order it considers necessary to give effect to its determination of the appeal, and
- (b) may also make any incidental or consequential order as appears to it to be just.

(3) An appeal under section 28, 29, 30 or 31 shall be taken to be an appeal in criminal proceedings while an appeal under section 32 shall be taken to be an appeal in civil proceedings.

**Appeals - procedure.**

27. (1) Where the court that made the decision appealed against is -

- (a) the Magistrate's Court, the appellant may appeal to the Royal Court,
- (b) the Royal Court, the appellant may appeal to the Court of Appeal.

(2) Where the appellant has appealed to the Royal Court under subsection (1)(a), he may subsequently appeal to the Court of Appeal against that decision.

(3) For the purposes of this section, "**Magistrate's Court**" includes -

- (a) the Court of Alderney, and
- (b) the Court of the Seneschal of Sark.

**Appeals – certifications by court.**

**28.** Where a court has -

- (a) certified that an offence was sexually aggravated under section 2(3) or 17(2), the offender may appeal against the certification, or
- (b) refused so to certify the offence, Her Majesty's Procureur may appeal against the refusal.

**Appeals – length of minimum notification period.**

**29.** Where a court specifies the minimum notification period under section 3(1) or (2), Her Majesty's Procureur or the notifier may appeal against the length of that period.

**Appeals – sexual offences prevention orders.**

**30.** (1) Where a court -

- (a) has made a section 18 order in respect of a person, or
- (b) has refused to amend such an order,

the offender in respect of whom the order is made may appeal, against -

- (i) the making of the order,
- (ii) the terms of the order, or
- (iii) the refusal to amend the order.

(2) Where a court -

- (a) has refused to make a section 18 order in respect of an offender, Her Majesty's Procureur may appeal against the refusal to make the order, or
- (b) has -
  - (i) made such an order, Her Majesty's Procureur may appeal against the terms of the order, or
  - (ii) has refused to amend such an order, Her Majesty's Procureur may appeal against the refusal.

**Appeals – foreign travel orders.**

**31.** (1) Where the Royal Court -

- (a) has made a section 20 order in respect of an offender,
- (b) has made an order under section 20(6)(b) in respect of an offender, or

- (c) has refused to vary, renew or discharge such an order,

the offender may appeal against -

- (i) the making of the order, or
- (ii) the terms of the order including the period specified in the order.

(2) Where the Royal Court -

- (a) has refused to make a section 20 order or an order under section 20(6)(b) in respect of an offender, Her Majesty's Procureur may appeal against the decision to refuse to make the order, or
- (b) has made such an order, Her Majesty's Procureur may appeal against the terms of the order including the period specified in the order.

**Appeals – risk of sexual harm orders.**

32. (1) Where the Royal Court -

- (a) has made a section 22 order in respect of a defendant,
- (b) has refused to vary, renew or discharge such an order, or
- (c) has refused to make such an order,

the defendant may appeal against -

- (i) the making of the order, or
  - (ii) the terms of the order including the period specified in the order.
- (2) Where the Royal Court -
- (a) has refused to make a section 22 order in respect of a defendant, Her Majesty's Procureur may appeal against the decision to refuse to make the order, or
  - (b) has made such an order, Her Majesty's Procureur may appeal against the terms of the order including the period specified in the order.

## PART VII

### ROLE OF SPECIFIED PERSONS

#### **Supply of information by Chief Officer of Police.**

33. (1) This section applies to information -
- (a) notified under section 4 or 6, or
  - (b) gained in respect of a person by virtue of section 5.



(2) The Chief Officer of Police may supply information to which this section applies to a person in the Bailiwick or elsewhere who in the opinion of the Chief Officer needs the information -

- (a) to prevent, detect, investigate or prosecute an offence, or
- (b) to protect a specified child or children, or children generally.

(3) Except as provided by subsection (4), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising or imposed).

(4) This section does not authorize the doing of anything that contravenes the Data Protection (Bailiwick of Guernsey) Law, 2001.

(5) This section does not affect a power to supply information that exists apart from this section.

**Arrangements for monitoring and managing risks posed by certain offenders.**

**34.** (1) In this Part -

"relevant sentence" means -

- (a) in respect of a sexual offence, any sentence of imprisonment or youth detention,

- (b) in respect of a violent offence, a sentence of imprisonment or youth detention for a term of 12 months or more,
- (c) in respect of a sexual or violent offence -
  - (i) a sentence of detention during Her Majesty's pleasure, and
  - (ii) a hospital treatment order or restriction order made under the Mental Health Law,

**"responsible authority"** means -

- (a) the Chief Officer of Police,
- (b) the Chief Probation Officer, and
- (c) the Governor of the States Prison,

acting jointly, and

**"sexual offence"** and **"violent offence"** have the meanings given in section 11 of the Supervision of Offenders Law.

(2) The responsible authority may establish arrangements for the purpose of assessing and managing the risks posed by -

- (a) offenders who have been given a relevant sentence for a sexual or violent offence,
- (b) notifiers for the purposes of Part II, and
- (c) other persons who are considered by the responsible authority to be persons who may cause serious harm to the public.

(3) When carrying out a duty or performing a function under the arrangements established under subsection (2) -

- (a) the responsible authority must act in co-operation with-
  - (i) any department or committee (however titled) of -
    - (A) the States of Guernsey,
    - (B) the States of Alderney, and
    - (C) the Chief Pleas of Sark, and
  - (ii) any office or position holder, and
- (b) any -
  - (i) any department or committee (however titled) of -

(A) the States of Guernsey,

(B) the States of Alderney, and

(C) the Chief Pleas of Sark, and

(ii) office or position holder,

must act in co-operation with the responsible authority to the extent that such co-operation is compatible with the exercise by the department, committee, office holder or position holder of their statutory functions and duties.

(4) Co-operation under subsection (3) may include the exchange of information.

(5) In the performance of its functions under this section, the responsible authority may also seek the help and advice of any other person, who -

(a) may assist the responsible authority in the performance of those functions, and

(b) may be within or outwith the States.

(6) For the purposes of receiving help and advice from a person under subsection (5), the responsible authority and that person may exchange information.

(7) Except as provided by subsection (8), the supply of information by any person under this section is to be taken not to breach any restriction on the disclosure of information (however arising or imposed).

(8) This section does not authorize the doing of anything that contravenes the Data Protection (Bailiwick of Guernsey) Law, 2001.

**Further provisions in relation to arrangements established under section 34.**

**35.** The States may by Ordinance make such provision as they think fit in relation to any arrangements established under section 34, including but not limited to -

- (a) the definition of relevant offenders, and
- (b) the review of any such arrangements.

**Duties of Probation Service in connection with victims of certain offences.**

**36.** (1) This section applies in a case where a court -

- (a) convicts an offender of a sexual or violent offence, and
- (b) imposes a relevant sentence on him in respect of that conviction.

(2) In cases where this section applies, the Probation Service must take all reasonable steps to ascertain whether any appropriate person wishes to-

- (a) make representations about whether the offender should be subject to any conditions or requirements on his release and, if so, what conditions or requirements, or
- (b) receive information about any conditions or requirements to which the offender is to be subject on his release.

(3) In this section, "**appropriate person**", in relation to an offence, means any person who appears to the Probation Service to be, or to act for, the victim of the offence ("**the victim**").

(4) Where it is ascertained that an appropriate person wishes to make representations in accordance with subsection (2)(a), the Probation Service must forward those representations to the person responsible for determining the matters mentioned in that paragraph.

(5) Where it is ascertained that an appropriate person wishes to receive information in accordance with subsection (2)(b), the Probation Service must take all reasonable steps -

- (a) to inform that person whether or not the offender is to be subject to any conditions or requirements on his release,
- (b) if the offender is to be subject to any such conditions or requirements, to provide that person with details of

any conditions or requirements which relate to contact with the victim or his family, and

- (c) to provide that person with such other information as is considered by the Probation Service to be appropriate in all the circumstances of the case.

- (6) In this section -

"**conditions**" means conditions attached to a licence by the Parole Review Committee under -

- (i) section 1 of the Parole Review Committee Ordinance, 1991<sup>n</sup>, or
- (ii) section 3 of the Supervision of Offenders Law (in respect of extended sentence licences), and

"**requirements**" means requirements specified in writing by the Department under -

- (i) section 2 of the Supervision of Offenders Law (in respect of terms of imprisonment), or

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<sup>n</sup> Recueil d'Ordonnances Tome XXV, p. 230; Tome XXVI, p. 150 and Tome XXIX, p. 448 and Order in Council No. IX of 2005.

- (ii) section 4 of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990<sup>o</sup> (in respect of terms of youth detention).

(7) This section has effect in relation to cases where the relevant sentence is imposed after the section comes into force.

(8) The Department may by regulations make such provision as it thinks fit in relation to the -

- (a) the making of representations, and
- (b) the provision of information,

under this section.

**Disclosure of information about convictions of offenders to members of the public.**

37. (1) The responsible authority must, in the course of performing its functions under arrangements established under section 34, consider whether to disclose information in its possession to a particular member of the public about a person managed by it (a "**managed offender**").

(2) Where the responsible authority has reasonable cause to believe that -

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<sup>o</sup> Orders in Council Vol. XXXII, p. 106; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.



- (a) a managed offender poses a risk of causing serious harm to any specified person, or to persons of any specified description, and
- (b) the disclosure of information about the managed offender to the particular member of the public is necessary for the purpose of -
  - (i) protecting the specified person from serious harm caused by the managed offender, there is a presumption that the responsible authority shall, or
  - (ii) protecting the persons of that specified description from serious harm caused by the managed offender, the responsible authority may,

disclose information in its possession about the managed offender to the particular member of the public.

(3) The presumption or power to disclose information under subsection (2) arises whether or not the person to whom the information is disclosed requests the disclosure.

(4) Where the responsible authority makes a disclosure under this section -

- (a) it may disclose such information about the managed offender as it considers appropriate to disclose to the particular member of the public, and
- (b) it may impose conditions for preventing the particular member of the public from disclosing the information to any other person.

(5) Any disclosure under this section must be made as soon as is reasonably practicable having regard to all the circumstances.

(6) The responsible authority must compile and maintain a record about the decisions it makes in relation to the discharge of its functions under this section.

(7) The record must include the following information -

- (a) the reasons for making a decision to disclose information under this section,
- (b) the reasons for making a decision not to disclose information under this section, and
- (c) the information which is disclosed under this section, any conditions imposed in relation to its further disclosure and the name and address of the person to whom it is disclosed.

(8) Nothing in this section requires or authorises the making of a disclosure which contravenes the Data Protection (Bailiwick of Guernsey) Law, 2001.

(9) This section is not to be taken as affecting any other power of any person to disclose any information about a managed offender.

(10) Where a person to whom information has been disclosed under this section breaches a condition imposed pursuant to subsection (4)(b), that person is guilty of an offence and is liable 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 both.

(11) The Department may, in relation to the disclosure of information under this section -

- (a) by regulation make such provision as it thinks fit, including -
  - (i) the method of disclosure, and
  - (ii) the form that the disclosure will take, and
- (b) give such guidance to the responsible authority as it thinks fit.

**Section 37: interpretation.**

38. For the purposes of section 37 -

- (a) references to information about a managed offender are references to information about -
  - (i) any convictions, cautions and findings which relate to the managed offender,
  - (ii) anything under the law of any country or territory outside the Bailiwick which in the opinion of the responsible authority corresponds to a conviction, caution or finding (however described), and
  - (iii) any other information relevant to the protection of the specified person or of persons of a specified description from serious harm caused by the managed offender, including, without prejudice to the generality of the foregoing -
    - (A) any information which has been provided for the purposes of an application for an order under Part IV, and
    - (B) any assessment of the risk of serious harm posed by the managed offender to the specified person or to persons of a specified description, and

- (b) the provisions of section 8 of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002<sup>P</sup> (protection for spent convictions and cautions) are to be disregarded.

## PART VIII

### EVIDENCE AND RELATED PROVISIONS

#### Interpretation of this Part.

39. (1) For the purposes of this Part –

"**accused**" means a person accused of a relevant offence,

"**complainant**" means a person against whom a relevant offence is alleged to have been committed,

"**criminal proceedings**" is to be interpreted in accordance with section 86 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, as adapted for clarification by subsection (2), and

"**live-link evidence direction**" means a direction given under section 1 of the Live-Link Evidence (Bailiwick of Guernsey) Ordinance, 2008<sup>Q</sup>.

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<sup>P</sup> Order in Council No. XIV of 2002 and No. XVI of 2009; Ordinance No. XXVI of 2010. See also Orders en Conseil Vol. XLIII(1), p. 3; Order in Council No. XIV of 2009 and Recueil d'Ordonnances Tome XXXI, p. 386.

<sup>Q</sup> Recueil d'Ordonnances Tome XXXIII, p. 53.

(2) For the avoidance of doubt -

- (a) any references in sections 85 and 86 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, to "**criminal proceedings**" include every stage in criminal proceedings, from their institution until and including any appeal, in which a witness may be called upon, and
- (b) any reference to a video recording includes a reference to a part of such a recording, and any order which can be made in respect of a video recording may be made in respect of a part of such a recording.

**Recorded evidence in chief.**

**40.** (1) Subject to subsection (2), in criminal proceedings in respect of a relevant offence, a court may give a direction ("**a recorded evidence direction**") that a video recording of an interview with any specified witness, other than the accused, be admitted as the evidence in chief of that witness.

(2) A recorded evidence direction may not be given in respect of a video recording if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording should not be so admitted.

(3) Where a recorded evidence direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if -

- (a) it appears to the court that -
    - (i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any other order of the court including, but not limited to, a live link evidence direction), and
    - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available, or
  - (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.
- (4) Where a recording is admitted under this section -
- (a) the witness must be called by the party tendering it in evidence, unless -
    - (i) a live-link evidence direction has been given,
    - (ii) any other direction has been made by a court which provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court, or

- (iii) the parties to the proceedings have agreed that there is no need for the witness to be called, and
- (b) the witness may not give evidence in chief otherwise than by means of the recording -
  - (i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony, or
  - (ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.

(5) The court may, in giving permission for the purposes of subsection (4)(b)(ii), give a live-link evidence direction or make such other order as it sees fit.

(6) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

(7) Where a recorded evidence direction provides for part only of a recording to be admitted under this section, references in subsections (4) and (5) to the witness's recorded testimony are references to the part of the testimony which is to be so admitted.

**Effect of recorded evidence direction.**

**41.** (1) A witness whose evidence in chief is the subject of a recorded evidence direction is deemed for all purposes to be physically present in the



accustomed place from which witnesses give evidence in the courtroom where those proceedings are being conducted.

(2) A person who is to give, or who has given, evidence in criminal proceedings but whose evidence in chief was given pursuant to a recorded evidence direction is deemed for all purposes to be a person who is to be, or who has been, physically present as described in subsection (1).

**Relevant evidence.**

**42.** (1) In criminal proceedings in respect of a relevant offence -

- (a) no evidence may be admitted, and
- (b) no question may be asked in cross-examination,

about -

- (i) any sexual experience or activity, or
- (ii) lack of sexual experience or activity,

of the complainant, except with leave of the court.

(2) For the purposes of subsection (1), "**sexual experience or activity**" -

- (a) means sexual experience or activity other than that which forms the subject matter of the charge, and
- (b) includes sexual experience or activity -

(i) whether with the accused or with any other person, and

(ii) to which the complainant did not consent.

(3) The court shall not grant leave under subsection (1) unless -

(a) the court is satisfied that the evidence or question has significant probative value to a fact in issue or to credit, and

(b) the evidence is of, or the question is in relation to, specific instances of sexual experience or activity,

(c) the evidence sought to be admitted or the question sought to be asked has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice, taking into account the matters set out in subsection (5), and

(d) the party seeking to admit the evidence or ask the question has complied with the requirements in subsection (6).

(4) Evidence of a complainant's sexual experience or activity is not admissible, or a question in relation to that sexual experience or activity shall not be asked, to support an inference that, by reason of the fact that the complainant has engaged in sexual activity or has had sexual experience, the complainant -

- (a) is the type of person who is more likely to have consented to the sexual activity that forms the subject matter of the charge, or
- (b) is less worthy of belief.

(5) In determining whether the probative value of the evidence sought to be admitted or the question sought to be asked is not substantially outweighed by any danger of prejudice to the proper administration of justice under subsection (3)(b), the court shall take into account the following matters -

- (a) the interests of justice, including the right of the accused to make a full answer and defence,
- (b) the distress, humiliation, or embarrassment which the complainant may suffer as a result of leave being granted,
- (c) the need to respect the complainant's personal dignity and privacy, and
- (d) whether there is a reasonable prospect that the evidence or question will assist in arriving at a just determination in the case,

and the court may take into account any other factor which the court considers relevant.

(6) The party seeking leave under subsection (1) must do so by application to the court in writing and must -

(a) set out -

- (i) detailed particulars of the evidence sought to be adduced or of the question sought to be asked,
- (ii) how the evidence or question has significant probative value to a fact in issue or to credit, and
- (iii) the fact in issue to which the evidence or question is relevant (where it does not go to credit), and

(b) give a copy of the application to the other party at least 7 days before the hearing of the application, unless the court orders that it should be given at such time as it considers to be appropriate in the interests of justice in the particular case.

(7) The court shall hear an application to grant leave under subsection (1) in the absence of -

(a) the Jurats (where the court is the Royal Court of Guernsey, whether sitting as a Full Court or an Ordinary Court),

(b) the public, and

(c) the complainant.

(8) At the conclusion of the hearing of an application for leave under subsection (1), the court must make a determination whether or not to grant leave to admit the evidence, or allow the question to be asked, and must record –

(a) the reasons for that determination, and

(b) where the court grants leave –

(i) the nature of the evidence which may be adduced, or

(ii) the question, or series of questions, that may be asked the complainant.

**Cross-examination of complainants.**

43. No person charged with a relevant offence may in any criminal proceedings cross-examine in person a complainant, either –

(a) in connection with that offence, or

(b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

**Defence representation for purposes of cross-examination.**

**44.** (1) Where an accused is prevented from cross-examining in person a complainant by virtue of section 43, the court must -

- (a) invite the accused to arrange for an Advocate to act for him for the purpose of cross-examining the complainant, and
- (b) require the accused to notify the court, by the end of such period as it may specify, whether an Advocate is to act for him for that purpose.

(2) If by the end of the period mentioned in subsection (1)(b) either -

- (a) the accused has notified the court that no Advocate is to act for him for the purpose of cross-examining the complainant, or
- (b) no notification has been received by the court and it appears to the court that no Advocate is to so act,

the court must consider whether it is necessary in the interests of justice for the complainant to be cross-examined by an Advocate appointed to represent the interests of the accused.

(3) If the court decides that it is necessary in the interests of justice for the complainant to be so cross-examined, the court must choose and

appoint an Advocate to cross-examine the complainant in the interests of the accused.

(4) An Advocate so appointed shall not be responsible to the accused and that Advocate may not be the subject of any criminal, civil or disciplinary proceedings commenced or instigated by or on behalf of the accused on the basis of the cross-examination conducted by that Advocate.

(5) An appointment made by the court under this section shall, except to such extent as the court may in any particular case determine, terminate at the conclusion of the cross-examination of the complainant whom the court has prevented the accused from cross-examining.

(6) Rules of Court may make provision -

- (a) as to the time when, and the manner in which, subsection (1) is to be complied with, and
- (b) in connection with the appointment of an Advocate under subsection (3), and in particular for securing that an Advocate so appointed is provided with evidence or other material relating to the proceedings.

**Anonymity of complainants of relevant offences.**

**45.** (1) Where an allegation has been made that a relevant offence has been committed against a complainant, no matter relating to that complainant shall during the complainant's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the complainant in respect of that allegation.

(2) Where a person is accused of a relevant offence, no matter likely to lead members of the public to identify the complainant against whom the offence is said to have been committed shall during the complainant's lifetime be included in any publication.

(3) This section -

- (a) does not apply in relation to a complainant by virtue of subsection (1) at any time after a person has been accused of the offence, and
- (b) in its application in relation to a complainant by virtue of subsection (2), has effect subject to any direction given under section 46.

(4) The matters relating to a complainant in relation to which the restrictions imposed by subsection (1) or (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular -

- (a) the complainant's name,
- (b) the complainant's address,
- (c) the identity of any school or other educational establishment attended by the complainant,
- (d) the identity of any place of work, and



(e) any still or moving picture of the complainant.

(5) Nothing in this section prohibits the inclusion in a publication of a matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

(6) For the avoidance of doubt, the provisions of this section shall not apply or, where they do apply, shall no longer apply, where a complainant is convicted of an offence on the basis that the complaint made by that person was false.

**Powers to displace section 45.**

**46.** (1) If, before the commencement of a trial at which a person is charged with a relevant offence, he or another person against whom the complainant may be expected to give evidence at the trial, applies to the court for a direction under this subsection and satisfies the judge -

- (a) that the direction is required for the purpose of inducing persons who are likely to be needed as witnesses at the trial to come forward, and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the court shall direct that section 45 shall not, by virtue of the accusation alleging the relevant offence in question, apply in relation to the complainant.

(2) If at a trial the court is satisfied -

- (a) that the effect of section 45 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial, and
- (b) that it is in the public interest to remove or relax the restriction,

it shall direct that section 45 shall not apply to such matter as is specified in the direction.

(3) A direction shall not be given under subsection (2) by reason only of the outcome of the trial.

(4) If a person who has been convicted of an offence and has given notice of appeal against the conviction, or notice of an application for leave so to appeal, applies to the appellate court for a direction under this subsection and satisfies the court -

- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal, and
- (b) that the applicant is likely to suffer substantial injustice if the direction is not given,

the court shall direct that section 45 shall not, by virtue of an accusation which alleges a relevant offence and is specified in the direction, apply in relation to a complainant so specified.

(5) A direction given under any provision of this section does not affect the operation of section 45 at any time before the direction is given.

(6) If, after the commencement of a trial at which a person is charged with a relevant offence, a new trial of the person for that offence is ordered, the commencement of any previous trial shall be disregarded for the purposes of subsection (1).

(7) Notwithstanding the provisions of this section, where –

- (a) a complainant requests the court to direct that section 45 does not apply to him, and
- (b) the court considers that it is in the interests of justice to so direct,

the court may in accordance with rules of court prescribed by the Royal Court direct that section 45 does not apply to the complainant.

### **Offence.**

**47.** (1) If any matter is included in a publication in contravention of section 45, the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale –

- (a) where the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
- (b) where the publication is a relevant programme –

- (i) any body corporate engaged in providing the programme service in which the programme is included, and
- (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper, and
- (c) in the case of any other publication, any person publishing it.

(2) Where a person is charged with an offence under this section in respect of the inclusion of any matter in a publication, it shall be a defence, subject to subsection (3), to prove that the publication in which the matter appeared was one in respect of which the person against whom the offence mentioned in section 40 is alleged to have been committed had given written consent to the appearance of matter of that description.

(3) Written consent is not a defence if it is proved that any person interfered unreasonably with the peace or comfort of the person giving the consent, with intent to obtain it, or that person was under the age of 16 at the time when it was given.

(4) Where a person is charged with an offence under this section it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter in question.

(5) Where -

- (a) a person is charged with an offence under this section, and
- (b) the offence relates to the inclusion of any matter in a publication in contravention of section 45(1),

it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the allegation in question had been made.

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

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In relation to a body corporate whose affairs are managed by its members, "**director**", in subsection (6), means a member of the body corporate.

PART IX  
MISCELLANEOUS PROVISIONS

**Rules of court.**

**48.** (1) The Royal Court may by Order make rules of court dealing with all procedural matters arising under this Law and which -

- (a) may contain such supplementary, incidental, transitional and consequential provision as may appear to be necessary or expedient,
- (b) may be amended or repealed by subsequent Rules of Court, and
- (c) may make different provision in relation to proceedings before different courts of the Bailiwick.

(2) Without prejudice to the generality of the foregoing, rules of court may, in particular, make provision -

- (a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced),
- (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court,

- (c) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings,
  - (d) with respect to preliminary hearings,
  - (e) for the service outside the Bailiwick in such circumstances and in such manner as the Royal Court thinks fit, of any notice of proceedings in the court,
  - (f) enabling the court, in such circumstances as the Royal Court thinks fit, to proceed on any application even though the respondent has not been given notice of the proceedings,
  - (g) for a person making an application to a court or an appeal under this Law to serve prescribed documents on Her Majesty's Procureur, and
  - (h) for a court to sit in private in proceedings in which any powers under this Law may be exercised by the court with respect to any child.
- (3) In this section -

"**given**" in relation to a summons, means "**served**",

"**material**" includes any picture or representation,

**"notice of proceedings"** means a summons or such other notice of proceedings as is required, and

**"relevant proceedings"** means an application made, or proceedings brought, under a provision mentioned in subsection (2) and a part of such proceedings.

**Reporting of cases.**

**49.** (1) Subsections (2) and (3) apply in respect of any proceedings in-

- (a) the Magistrate's Court, (whether or not constituted as the Juvenile Court),
- (b) the Royal Court (however constituted),
- (c) the Court of Alderney,
- (d) the Court of the Seneschal of Sark, or
- (e) any court sitting as an appellate court from a decision made by a court listed in paragraphs (a) to (d),

where the defendant is charged with a relevant offence.

(2) Subject to an order made under section 46, where this subsection applies -

- (a) no report shall be published which -



- (i) reveals the name, address, or
- (ii) includes any particulars which are reasonably likely to lead to the identification,

of any complainant against whom the relevant offence is alleged to have been committed, and

- (b) in relation to the proceedings, no picture shall be published which is or includes a picture of any such complainant.

(3) Where this subsection applies -

- (a) no report shall be published which -

- (i) reveals the name, address or school, or
- (ii) includes any particulars which are reasonably likely to lead to the identification,

of any child concerned in those proceedings, in respect of whom the proceedings are taken or as being a witness or complainant therein, and

- (b) in relation to the proceedings, no picture shall be published which is or includes a picture of any such child.

(4) However, any court mentioned in subsection (1) may by order, having regard to the interests of justice and the welfare of the child concerned, dispense with the requirements of subsections (2) or (3) to such extent, and subject to such terms and conditions, as may be specified in the order.

(5) Any person who publishes any matter in contravention of this section is guilty of an offence and liable on -

- (a) summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding twice level 5 on the uniform scale, or both, or
- (b) conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or both.

(6) Where a body corporate is guilty of an offence under this section and it is shown that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a 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.

(7) Where the affairs of a body corporate are managed by its members, subsection (6) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director.

(8) For the purposes of this section, "**publish**" means to distribute, publicise or disseminate by any medium, including by newspaper, by radio or television broadcast, or by the internet, and related expressions are to be construed accordingly.

**Transitional provisions.**

**50.** (1) Where -

- (a) before the commencement of this Law, a person has been convicted of an offence which would be a relevant offence under this Law, and
- (b) for that offence, that person at the time that the Law commences -
  - (i) has not been dealt with by a court,
  - (ii) is serving or is subject a sentence of imprisonment or youth detention (whether suspended or not),
  - (iii) is subject to a community service order or probation order,
  - (iv) is subject to a bind over, or
  - (v) is subject to post-custodial supervision, having been released from prison after serving the whole or part of a sentence of imprisonment or youth detention,

that person is subject to the notification requirements as if he had been convicted of a relevant offence by a court for the purposes of section 2(1).

(2) Subject to subsection (3), where a person is subject to the notification requirements by virtue of subsection (1) -

- (a) he shall be subject to those requirements for a minimum period of 2 years, and
- (b) he must give notification in accordance with section 4 within 24 hours of the commencement of the Law or as otherwise instructed in writing by the Chief Officer of Police.

(3) Where a person is subject to the notification requirements by virtue of subsection (1)(b)(i) -

- (a) the minimum period of notification will be that ordered in accordance with section 3 when he is dealt with by a court, and
- (b) he shall notify an authorised officer in accordance with section 4.

**Commencement of proceedings for offences under this Law.**

**51.** Proceedings for an offence under this Law may be commenced in any court in the Bailiwick having jurisdiction in any place where the person charged with the offence resides or is found.

**Convictions outside the Bailiwick.**

**52.** (1) Except as provided by subsection (2), a requirement or condition of this Law -

- (a) that a person has been convicted of an offence outside the Bailiwick, or
- (b) that a person has been convicted outside the Bailiwick of an offence which, if committed in the Bailiwick, would have been a sexual offence to which this Law applies,

is to be taken to be met unless, not later than Rules of Court may provide, the defendant serves on Her Majesty's Procureur a notice -

- (i) stating that, on the facts as alleged with respect to the act in question, the requirement or condition is not in the person's opinion met,
- (ii) showing the person's grounds for that opinion, and
- (iii) requiring Her Majesty's Procureur to prove that it is met.

(2) A court, if it thinks fit, may permit the person to require Her Majesty's Procureur to prove that the requirement is met without service of a notice under subsection (1).

**Amendment.**

**53.** Part II of the Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009 is repealed.

**Interpretation.**

**54.** (1) In this Law, unless the context requires otherwise –

**"application for review"** has the meaning given in section 10(a),

**"approved establishment"** means an establishment approved for the purposes of the Mental Health Law,

**"authorised officer"** means –

(a) a police officer, or

(b) an employee of the States of Guernsey,

authorised for the purposes of this Law by the Chief Officer of Police,

**"the Bailiff"** means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

**"Chief Officer of Police"** means the Chief Officer of the Guernsey Police or any officer duly authorised by him,

**"child"**, except for the purposes of Part IV, means a person who has not attained the age of 18 years,

**"the Department"** means the States of Guernsey Home Department,

**"DNA profile"** and **"DNA sample"** have the meanings given in section 5(1),

**"Guernsey Police"** means the organisation also known or referred to as "the Island Police Force" including -

- (a) its Chief Officer and any other member of the salaried police force of the Island of Guernsey, and
- (b) any member of the special constabulary of the Island of Guernsey,

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

**"home address"**, in relation to a notifier, means -

- (a) the address of the person's sole or main residence in the Bailiwick, or
- (b) where the person has no such residence, the address or location of a place in the Bailiwick where the person can be found and, if there is more than one such place, such one of those places as the person may select,

and may, in either case, be a vehicle or vessel,

**"hospital treatment order"** means an order made under section 66 of the Mental Health Law,

**"imprisonment"** includes detention at Her Majesty's pleasure,

**"Magistrate's Court"** includes the Juvenile Court,

**"managed offender"** has the meaning given in section 32(1),

**"the Mental Health Law"** means the Mental Health (Bailiwick of Guernsey) Law, 2010<sup>r</sup>,

**"notifier"** has the meaning given in section 2(9),

**"prescribed"** means prescribed by regulations and cognate expressions should be interpreted accordingly,

**"prescribed notification requirements"** has the meaning given in section 2(8),

**"recorded evidence direction"** has the meaning given in section 40(1),

**"relevant body"** has the meaning given in section 10(f),

**"relevant offence"** has the meaning given in section 1(1),

**"responsible authority"** has the meaning given in section 34(1),

**"restriction order"** means an order made under section 70 of the Mental Health Law,

**"section 18 order"** has the meaning given in section 19(1),

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<sup>r</sup> Order in Council No. XV of 2011.



**"section 20 order "** has the meaning given in section 21(1),

**"section 22 order "** has the meaning given in section 23(1),

**"sexual activity"** means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual,

**"sexual harm"** means physical harm, psychological harm or both caused by sexual activity,

**"sexual offence to which this Law applies"** means an offence to which this Law applies by virtue of section 1,

**"the Supervision of Offenders Law"** means the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004<sup>s</sup>, and

**"youth detention"** means detention under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.

(2) For the purposes of this Law, a person is to be taken to have been convicted of an offence if the person -

- (a) was found guilty of committing the offence,
- (b) was found not guilty of committing the offence solely by reason of the person's insanity or infirmity of mind, or

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<sup>s</sup> Order in Council No. IX of 2005.

- (c) was found to be unfit to be tried for the offence but a court has determined that the person did the act alleged,

and "**conviction**" and "**convicted**" are to be construed accordingly.

- (3) Any reference in this Law to an offence includes a reference -

- (a) to an attempt, conspiracy or incitement to commit the offence, and
- (b) to aiding and abetting, counselling or procuring the commission of the offence.

(4) Any reference in this Law to a court sentencing a person includes a reference to a court remitting a child defendant to the Children, Youth and Community Tribunal for consideration and determination under section 7(1)(b) of the Criminal Justice (Child and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008.

(5) An act punishable under the law in force in a jurisdiction outside the Bailiwick constitutes an offence under that law for the purposes of this Law however it is described by the law of the jurisdiction.

(6) The Interpretation (Guernsey) Law, 1948<sup>t</sup> applies to the interpretation of this Law throughout the Bailiwick.

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<sup>t</sup> Ordres en Conseil Vol. XIII, p. 355.

(7) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(8) The States may by Ordinance amend this section.

**General provisions as to Ordinances and regulations.**

**55.** (1) An Ordinance or regulations under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or subsequent regulations, as the case may be, hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to be necessary or expedient, and
- (c) shall, in the case of regulations, be laid before a meeting of the States of Deliberation as soon as possible after being made; and if at that or the next meeting the States of Deliberation resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

(2) Any power conferred by this Law to make an Ordinance or regulations may be exercised -

- (a) in relation to all cases to which the power extends, or 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 make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether 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 for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

#### **Citation.**

**56.** This Law may be cited as the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013.

#### **Commencement.**

**57.** This Law shall come into force on the day appointed by Ordinance of the States and such an Ordinance may appoint different dates for different provisions and for different purposes.

**The Seafarer Recruitment and Placement Services  
(Maritime Labour Convention 2006) (Guernsey and  
Alderney) Ordinance, 2013**

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#### SCHEDULE

Particulars to be included in an agency or employment business' records relating to hirers

Particulars to be included in an agency or employment business' records relating to seafarers

# The Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Guernsey and Alderney) Ordinance, 2013

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> October, 2013<sup>a</sup>, and in exercise of the powers conferred on them by sections 1 and 3 of the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012<sup>b</sup>, hereby order:-

## PART 1 OBJECTIVE

### **Objective of the Ordinance.**

1. (1) The objective of this Ordinance is to establish a system of regulation of agencies and employment businesses in Guernsey and Alderney with the purpose of protecting seafarers and satisfying the requirements of Regulation 1.4 of the Maritime Labour Convention 2006 (the "**Convention**"), and this Ordinance shall be construed accordingly.

(2) The Department shall be the competent authority of Guernsey and Alderney for the purposes of the Convention.

## PART 2 REGISTRATION AND INSPECTION

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<sup>a</sup> Article \* of Billet d'État No. \*\* of 2013.

<sup>b</sup> Order in Council No. V of 2013.

**General restriction on agencies and employment businesses.**

2. Subject to the provisions of this Ordinance, no agency or employment business may introduce or supply a seafarer to a hirer or hold itself out as being capable of so doing unless it is registered by the Department under this Ordinance.

**Application for registration.**

3. (1) An agency or employment business required to be registered under section 2 shall apply to the Department for registration.

(2) An application for registration shall be made in such form and manner, and accompanied by a non-refundable application fee of such amount, as the Department may prescribe by regulations.

(3) On receipt of an application for registration and at any time thereafter the Department may by notice in writing require the applicant, or any person who is or is to be a director, controller, partner, or senior officer of the applicant, to provide such additional information and documents as the Department may reasonably require for the purpose of determining the application.

(4) The Department's requirements under subsection (3) may differ as between different applications.

(5) An application under this section may be withdrawn by notice in writing to the Department at any time before it is determined.

(6) If prior to the determination of the application there is any change to any of the information supplied to the Department by or on behalf of an



applicant for the purposes of an application for registration, the applicant shall inform the Department, before the application is determined, of the change; and a failure to do so is, without prejudice to the generality of any other provision of this Ordinance, a ground for the refusal or revocation of registration.

**Grant or refusal of registration.**

4. (1) Subject to subsection (2), on receipt by the Department of an application under section 3, an officer appointed under section 23(1) ("**an officer**") or an approved inspector shall inspect the agency or employment business for the purpose of ascertaining whether it complies with the requirements of Regulation 1.4 of the Convention, following which the Department shall -

- (a) grant the application, or
- (b) refuse the application,

and shall serve on the applicant notice in writing of the decision.

(2) An agency or employment business need not be inspected under subsection (1) if the Department is satisfied that it has been audited within the preceding twelve months by an approved inspector, for the purpose of assessing its compliance with the requirements of Regulation 1.4 of the Convention.

(3) The Department may refuse an application for registration only if -

- (a) the application is not accompanied by the application fee prescribed in regulations made under section 3(2), or the application is otherwise not made in accordance with the provisions of section 3,

- (b) it appears to the Department that any information, statement or document provided in support of the application is false, misleading, deceptive or inaccurate, or
- (c) it appears to the Department, as a result of an inspection under subsection (1), an audit under subsection (2), or otherwise, that the agency or employment business in question does not comply with one or more of the requirements of Regulation 1.4 of the Convention.

(4) In this Ordinance, an "**approved inspector**" means a person, body or organisation approved for the purposes of this Ordinance by the Department.

**Certificate of registration.**

5. (1) On granting an application for registration of an agency or employment business under section 4, the Department shall issue to the applicant a certificate of registration in such form and containing such information as the Department may determine.

(2) An agency or employment business shall immediately deliver its certificate of registration to the Department –

- (a) whenever required to do so by the Department, and
- (b) on the revocation, suspension or surrender of its registration.

(3) Except when required by or under subsection (2) to deliver its certificate of registration to the Department, an agency or employment business registered under this Ordinance (a "**registered agency or employment business**") shall, at its principal place of business in the Bailiwick, at all times during ordinary business hours, make the certificate available to any person reasonably requesting to see it.

(4) A certificate of registration remains, at all times, the property of the Department.

**Annual inspection.**

6. An officer or an approved inspector shall inspect a registered agency or employment business within the period of ten to twelve months after the previous inspection or audit (as the case may be), for the purpose of ascertaining whether it continues to comply with the requirements of Part 3.

**Period of effectiveness of registration, and general requirements.**

7. (1) Subject to the provisions of this Part, the registration of an agency or employment business shall remain effective, and a certificate issued under section 5 shall remain valid, for five years from the date of registration or until the registration is revoked or surrendered under section 10 or 11 (as the case may be), whichever is the sooner.

(2) An annual fee, of such amount as may be prescribed by regulations of the Department, shall be payable, on or before such date in each year as may be so prescribed, in respect of each registered agency or employment business.

(3) A registered agency or employment business must inform the

Department of any change occurring to the information supplied to the Department for the purposes of its application for registration under section 3(2) or to any information supplied to the Department thereafter -

- (a) prior to the occurrence of such a change, or
- (b) where a change is sudden or unexpected, promptly after such change occurs,

and for the purposes of this subsection a change to such information includes the intention to cease being an agency or employment business to which this Ordinance applies.

**Application to renew registration.**

8. (1) The Department may renew the registration of a registered agency or employment business on an application being made to it under this section at any time within a three month period before the expiry of the registration in question.

(2) The provisions of sections 3, 4(1), 4(3), 4(4) and 5 apply to an application to renew registration under subsection (1) as they apply to an application for registration under section 3, and regulations under section 3(2) may make specific provision, and prescribe a specific fee, in relation to applications to renew registration.

(3) The provisions of sections 6 and 7, and this section, apply to an agency or employment business the registration of which has been renewed, as they apply to an agency or employment business which has been registered for the first time.

**Suspension of registration.**

9. (1) The Department may, by notice in writing served on an agency or employment business, suspend its registration -

- (a) at the request of the agency or employment business concerned, or
- (b) in any case in which it appears to the Department that it has power, under the provisions of section 10, to revoke the registration.

(2) The suspension of a registration in pursuance of subsection (1) shall be -

- (a) for a period specified by the Department,
- (b) until the occurrence of an event so specified, or
- (c) until any prohibitions or requirements so specified are complied with to the satisfaction of the Department.

(3) For the avoidance of doubt, during a period of suspension of a registration in pursuance of subsection (1) the agency or employment business may not carry on, or hold itself out as carrying on, the recruitment and placement of seafarers; but for the avoidance of doubt, this subsection has no effect in respect of employment agreements in existence when the relevant notice is served under subsection (1).

(4) Where the Department decides, otherwise than with the agreement of the agency or employment business concerned, to suspend a

registration, the Department shall serve upon it notice in writing of the decision.

**Revocation of registration.**

**10.** (1) The Department may revoke the registration held by an agency or employment business if it appears to the Department that -

- (a) the Department has been provided with false, misleading, deceptive or inaccurate information for the purposes of any provision of, or made under, this Ordinance -
  - (i) by or on behalf of the agency or employment business, or
  - (ii) by or on behalf of a person who is or is to be a director, controller, partner, or senior officer of the agency or employment business in question,
- (b) the agency or employment business has not been inspected as required under section 6,
- (c) the relevant annual fee prescribed in regulations made under section 7(2) has not been paid, or
- (d) the agency or employment business has not complied with any of the requirements of Part 3, whether it so appears as a result of an annual inspection under section 6 or otherwise.

(2) Where the Department decides to revoke a registration, the Department shall serve upon the agency or employment business concerned notice in writing of the decision.

(3) A decision of the Department to revoke a registration shall not have effect until the end of the period within which, under Part 5, an appeal can be brought against the revocation or, if an appeal is brought within that period, until the appeal is finally disposed of or withdrawn.

(4) For the avoidance of doubt, a decision of the Department to revoke a registration shall have no effect in respect of employment agreements in existence when the relevant notice is served under subsection (2).

#### **Surrender of registration.**

11. An agency or employment business may surrender its registration by notice in writing served upon the Department; and for the avoidance of doubt, a decision of an agency or employment business to surrender its registration shall have no effect in respect of employment agreements in existence when the relevant notice is served under this section.

#### **Crew administration companies.**

12. (1) When an employment business ("EB") receives crew administration services from a company ("X Ltd"), if the conditions set out in subsection (2) are met –

- (a) X Ltd shall be deemed to be an employment business for the purposes of this Ordinance if it is neither an agency nor an employment business,
- (b) the obligations of agencies and employment businesses

under sections 3 to 8 shall be deemed to be satisfied in respect of EB if they are satisfied in respect of X Ltd, and fees under those sections shall be payable by and in respect of X Ltd, and only X Ltd, and

- (c) a certificate of registration issued under section 5 in respect of X Ltd shall be in such form, and contain such information relating both to X Ltd and EB, as the Department may determine.

(2) The conditions are that a director or senior officer of X Ltd must, on behalf of EB, declare to the Department, officer or approved inspector (as the case may be) at the time of the application or inspection that EB is relying on the provisions of this section, and provide the Department, officer or approved inspector with such further information relating to EB as it or he requires.

(3) Notwithstanding the provisions of this section, the Department, officer or approved inspector may inspect (or require to be inspected, as the case may be), and the Department may require to be registered, any employment business if it or he considers it necessary to do so for the purposes of this Ordinance; and in such circumstances fees under this Ordinance shall be payable in respect of that employment business as if this section did not apply.

(4) For the avoidance of doubt, when this section applies –

- (a) the Department may suspend the registration of X Ltd under section 9 and revoke the registration of X Ltd under section 10, and X Ltd may surrender its registration under section 11, and



- (b) in any of the circumstances described in paragraph (a), EB may not carry on, or hold itself out as carrying on, the recruitment and placement of seafarers, and commits an offence under section 25 if it does so; but this paragraph has no effect in respect of employment agreements in existence when the relevant notice is served.

(5) In this section, "**crew administration services**" includes record keeping and monitoring services, services relating to the checking of crew qualifications, and services relating to complaints and disciplinary matters.

(6) The Department may issue guidance in relation to the application of this section.

(7) The Department may amend subsections (1) to (4) by regulations, for the purpose of –

- (a) ensuring that the requirements of Regulation 1.4 of the Convention continue to be satisfied in Guernsey and Alderney,
- (b) ensuring that this Ordinance does not impose inappropriate costs and administrative burdens on employment businesses, or
- (c) both (a) and (b).

PART 3  
PROHIBITIONS AND RESTRICTIONS ON, AND OBLIGATIONS OWED BY,  
AGENCIES AND EMPLOYMENT BUSINESSES

**Prohibition on use of blacklists, etc.**

13. (1) Subject to section 14, no agency or employment business shall compile, use, supply or sell a prohibited list.

(2) For the purposes of this Ordinance a "**prohibited list**" is a list which contains details of seafarers and is compiled with a view to being used by employers, agencies or employment businesses for the purposes of discrimination in relation to the recruitment or treatment of seafarers; and for the purposes of this section, "**seafarer**" includes a person who is currently, or has in the past, engaged in maritime work, whether or not he is currently seeking such work.

(3) For the purposes of this Ordinance "**discrimination**" means treating a seafarer less favourably on grounds of trade union membership, trade union activities, or any other ground that is not related to that seafarer's qualifications, skills and experience.

(4) The Department may by regulations prescribe other means or mechanisms intended to prevent or deter seafarers from gaining maritime work for which they are qualified, that agencies and employment businesses are prohibited from using.

**Exceptions to prohibition on use of blacklists.**

14. (1) An agency or employment business does not contravene section 13 in the following cases.

(2) The first case is where an agency or employment business

supplies a prohibited list, but –

- (a) does not know it is supplying a prohibited list, and
- (b) could not be reasonably expected to know that it is supplying a prohibited list.

(3) The second case is where an agency or employment business compiles, uses or supplies a prohibited list, but –

- (a) the sole purpose of so doing is to make known a contravention of section 13 or the possibility of such a contravention,
- (b) no information in relation to a person whose details are included in the prohibited list is published without the consent of that person, and
- (c) in all the circumstances compiling, using or supplying the prohibited list is justified in the public interest.

(4) The third case is where an agency or employment business compiles, uses, sells or supplies a prohibited list, but the sole purpose of so doing is to apply a requirement either that a person may not be considered for employment unless that person has experience or knowledge of trade union matters, and in all the circumstances it is reasonable to apply such a requirement.

(5) The fourth case is where an agency or employment business compiles, uses, sells or supplies a prohibited list, but the compilation, use, sale or supply of the prohibited list is required or authorised –

- (a) under an enactment,
- (b) by any rule of law, or
- (c) by an order of the court.

(6) The fifth case is where an agency or employment business uses or supplies a prohibited list –

- (a) for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings), or
- (b) for the purpose of giving or obtaining legal advice,

where the use or supply is necessary in order to determine whether this Ordinance has been, is being or will be complied with.

**Restriction on detrimental action relating to seafarers working elsewhere.**

**15.** (1) An agency or employment business may not (whether by the inclusion of a term in a contract with a relevant seafarer or otherwise) –

- (a) subject or threaten to subject a relevant seafarer to any detriment on the ground that –
  - (i) the relevant seafarer has terminated or given notice to terminate any contract between the seafarer and the agency or employment business, or

(ii) in the case of an employment business, the relevant seafarer has taken up or proposes to take up employment with any other person, or

(b) require the relevant seafarer to notify the agency or employment business, or any person with whom it is connected, of the identity of any future employer of the relevant seafarer.

(2) For the avoidance of doubt, the following shall not constitute a detriment within the meaning of subsection (1)(a) –

(a) the loss of any benefits to which the relevant seafarer might have become entitled had he not terminated the contract,

(b) the recovery of losses incurred by an agency or employment business as a result of the failure of the relevant seafarer to perform work he has agreed to perform, or

(c) a requirement in a contract with the agency or employment business for the seafarer to give a period of notice which is reasonable to terminate the contract.

(3) In this section, "**relevant seafarer**" includes a person who is engaged in maritime work, whether or not he is currently seeking such work, but excludes, in the case of an employment business, a seafarer who is or will be employed by the employment business under a contract of service or apprenticeship.

**Information required from seafarers.**

**16.** An agency or employment business may not introduce or supply a seafarer to a hirer unless it has obtained confirmation –

- (a) of the identity and age of the seafarer,
- (b) that the seafarer has the experience, training, qualifications and any authorisation or documents which the hirer considers necessary, or which are required by law or by any professional body, to work in the position the hirer seeks to fill, and
- (c) that the seafarer is willing to work in the position which the hirer seeks to fill.

**Seafarers' employment agreements.**

**17.** An agency or employment business may not supply a seafarer to a hirer unless –

- (a) it is satisfied that the employment agreement under which the seafarer is to be engaged is in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of, or is applicable to, that employment agreement,
- (b) it has explained to the seafarer his rights and duties under the employment agreement under which he is to be engaged,
- (c) it gives the seafarer the opportunity to examine that employment agreement both before he signs it (including the

opportunity to ask questions about its operation) and after he signs it, and

- (d) it gives the seafarer, free of charge, a copy of the employment agreement directly after he has signed it.

### **Records.**

**18.** (1) Every agency and employment business shall keep records which are sufficient to show whether the provisions of this Ordinance are being complied with, including the particulars specified in the Schedule, in relation to every application received by the agency or employment business from a hirer or seafarer.

(2) The records mentioned in subsection (1) shall be kept for at least one year from the date of their creation and, in the case of the particulars specified in the Schedule, at least one year after the date on which the agency or employment business last provides services in the course of its business as an agency or employment business to the applicant to whom they relate.

(3) The records mentioned in subsection (1) may be kept by an agency or employment business either at any premises it uses for or in connection with the carrying on of an agency or employment business, or elsewhere, provided that if they are kept elsewhere they are readily accessible.

### **Restriction on charging seafarers seeking employment, etc.**

**19.** (1) Subject to subsection (2), an agency or an employment business shall not demand or directly or indirectly receive from any seafarer any fee (in whole or in part) for finding him maritime work or for seeking to find him maritime work.

(2) For the avoidance of doubt, subsection (1) shall not prevent an agency or employment business from requiring a seafarer to bear the cost of obtaining –

- (a) a Seafarer Medical Certificate or equivalent,
- (b) a British Seaman's Discharge Book or equivalent, or
- (c) a passport or similar personal travel document (excluding any visa necessary for the employment).

**Repatriation of seafarers.**

**20.** (1) An agency or employment business shall not supply a seafarer to a hirer unless it is satisfied that the owner of the ship on which the seafarer would be working under that supply has procedures in place of a type described in subsection (2).

(2) The procedures mentioned in subsection (1) are procedures to return the seafarer to one of the places described in subsection (3) if he is –

- (a) left behind in any place or country other than his country of residence, or
- (b) is taken to such a place or country on being shipwrecked.

(3) The places are –



- (a) in the case of a seafarer who is resident in the Bailiwick, any place on the island on which he is resident,
- (b) in the case of a seafarer who is not resident in the Bailiwick, a place in the country in which he is resident being –
  - (i) if he joined the ship from which he was left behind or shipwrecked in that country, the place where he joined the ship, or
  - (ii) if he did not join the ship in that country, the place in that country at which he was engaged to join the ship, or
- (c) any other place which may be agreed between the seafarer and the ship owner.

### **Complaints.**

- 21.** (1) An agency or employment business shall –
- (a) inform a seafarer of how he may make a complaint about the agency or employment business,
  - (b) examine and respond to any such complaint within a reasonable period of time, and in any event within 28 days, and
  - (c) inform the Department of –

- (i) any complaint it receives under paragraph (a) within seven days of receiving the complaint, and
- (ii) its response to that complaint, within seven days of making that response.

(2) In this section, "**seafarer**" includes a person who has been placed in maritime work by the agency or employment business.

**Duty to provide financial system of protection.**

**22.** (1) An agency or employment business shall not supply a seafarer to a hirer unless the condition in subsection (2) is satisfied.

(2) The condition is that the agency or employment business has established a system of protection, by way of insurance or an equivalent appropriate measure that has been approved by the Department, to compensate the seafarer for monetary loss which he may incur as a result of –

- (a) a failure of the agency or employment business to meet its obligations to the seafarer, or
- (b) a failure of the shipowner under the seafarer employment agreement to meet its obligations to the seafarer.

**PART 4**  
**ENFORCEMENT**

**Appointment and powers of officers.**

23. (1) The Department may appoint officers to -

- (a) conduct inspections under Part 2, and
- (b) exercise the powers set out in subsections (4) and (5), for the purpose of assessing whether a registered agency or employment business continues to comply with the requirements of Part 3.

(2) An officer appointed under subsection (1) shall, if so required, produce some duly authenticated document showing his authority so to act.

(3) If it appears to an officer that any person with whom the officer is dealing while acting for the purposes of this Ordinance does not know that he is an officer so acting, he shall identify himself as such to that person.

(4) An officer may, at any reasonable time -

- (a) require the production by a relevant person of -
  - (i) any records required to be kept and preserved in accordance with section 18, and
  - (ii) any other documents that may be relevant to ascertaining whether an offence under this Ordinance has been committed,

- (b) inspect and examine those records and documents and to copy any material part of them,
- (c) require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) an explanation of them, and
- (d) require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) any additional information known to the relevant person which might reasonably be needed in order to establish whether this Ordinance is being or has been complied with.

(5) An officer has power for the performance of his duties at all reasonable times to enter any relevant premises in order to exercise any power conferred on him by subsection (4).

(6) The powers conferred by subsections (4) and (5) include power, on reasonable written notice, to require a relevant person -

- (a) to produce any records or documents mentioned in subsection (4)(a) to an officer at such time and place as may be specified in the notice, or
- (b) to attend before an officer at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in subsections (4)(c) and (d).

(7) A statement made by a person in response to a requirement imposed by or under this section -

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except -

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for -

(A) an offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(B) perjury, or

(C) perverting the course of justice.

(8) Nothing in this section shall compel the production or divulgence 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.

(9) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(10) A requirement imposed by or under this section shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(11) A person who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence, and is liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

(12) In relation to offences tried before the Court of Alderney, and for the avoidance of doubt, the penalties stipulated by subsection (11) are applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004<sup>c</sup>.

(13) In this section "**relevant person**" means any person whom an officer has reasonable cause to believe to be a person carrying on an agency or employment business, or an agent or employee of an agency or employment business.

(14) In this section "**relevant premises**" means any premises which an officer has reasonable cause to believe to be -

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<sup>c</sup> Order in Council No. III of 2005; No. XXII of 2010 and No. XI of 2012.

- (a) premises at which an agency or employment business carries on business, or
- (b) premises which an agency or employment business uses in connection with that business.

## PART 5 APPEALS

### **Appeals.**

**24.** (1) A person aggrieved by any of the following decisions of the Department -

- (a) a decision to refuse to grant an application for registration,
- (b) a decision to suspend registration, or
- (c) a decision to revoke registration,

may appeal to the Court.

(2) The grounds of an appeal under this section are 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.
- (3) An appeal under this section shall be instituted -
- (a) within a period of 28 days immediately following the date of the notice of the decision, and
  - (b) by summons served on the Department stating the grounds and material facts on which the appellant relies.
- (4) On an appeal under this section the Court may -
- (a) set the decision of the Department aside and, if the Court considers it appropriate to do so, remit the matter to the Department with such directions as the Court thinks fit, or
  - (b) confirm the decision, in whole or in part.

## PART 6

### OFFENCES

#### **Operation of seafarer recruitment and placement services when unregistered.**

**25.** (1) It is an offence for an agency or an employment business to introduce or supply a seafarer to a hirer, or to hold itself out as being capable of



introducing or supplying a seafarer to a hirer, if at the time of the introduction or supply or holding out that agency or employment business is not registered under this Ordinance.

(2) For the avoidance of doubt, an offence under subsection (1) is committed if at the time of the introduction or supply or holding out the registration of the agency or employment business has been suspended, revoked or surrendered.

(3) An agency or an employment business guilty of an offence under subsection (1) is liable -

(a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale,

(b) on conviction on indictment to a fine.

(4) In relation to offences tried before the Court of Alderney, and for the avoidance of doubt, the penalty stipulated by subsection (2)(a) is applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004.

**False or misleading statements, records etc.**

**26.** (1) A person who -

(a) in connection with an application for registration under this Ordinance,

(b) in purported compliance with a requirement imposed by or under any provision of this Ordinance or any regulation made under it, or

(c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Department for the purpose of exercising its functions conferred by or under this Ordinance -

(i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

- (2) A person guilty of an offence under subsection (1) is liable -
  - (a) on summary conviction, to a period of imprisonment not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both,
  - (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years, or to both.

(3) In relation to offences tried before the Court of Alderney, and for the avoidance of doubt, the penalties stipulated by subsection (2)(a) are applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004.

**Offences relating to certificates of registration.**

**27.** (1) It is an offence for an agency or employment business to fail to deliver a certificate of registration to the Department when required to do so under section 5(2).

(2) It is an offence for an agency or employment business to fail to make a certificate of registration available to a person reasonably requesting to see it in the circumstances set out in section 5(3).

(3) It is a defence for an agency or employment business charged with an offence under this section to show that the certificate in question is not, and was not at the relevant time, in its possession or control.

(4) An agency or employment business which is convicted of an

offence under this section is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(5) In relation to offences tried before the Court of Alderney, and for the avoidance of doubt, the penalty stipulated by subsection (4) is applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004.

**Offences by bodies corporate, etc.**

28. (1) This section applies to any offence under this Ordinance.

(2) If an offence committed by a body corporate is proved -

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In subsection (2) "**officer**", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) If the affairs of a body corporate are managed by its members, subsection (2) 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.

(5) Where an offence 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 such a capacity,

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

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

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

## PART 7

### SUPPLEMENTAL AND FINAL

#### **General provisions as to regulations.**

**29.** (1) Regulations under this Ordinance -

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Department to be necessary or expedient, and
- (c) shall be laid before a meeting of the States of Deliberation of Guernsey as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(2) Any power conferred by this Ordinance to make regulations may be exercised -

- (a) in relation to all cases to which the power extends, or 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 make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends, or any lesser provision (whether 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 for different purposes,
- (iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

**Transitional provisions.**

30. (1) In this section, "**the transitional period**" means the period of three months beginning on the day this Ordinance comes into force, and "**ongoing supply**" means the continuous supply by an employment business of a particular seafarer to a particular hirer to fill a particular position, which continuous supply commenced before the day on which this Ordinance comes into force and continues after that date.

(2) Subject to the provisions of this section, this Ordinance applies in respect of existing employment agreements with effect from the date on which it comes into force.

(3) Sections 2 and 25 shall not apply during the transitional period.

(4) For the avoidance of doubt, during the transitional period an agency or employment business may apply to the Department for registration under this Ordinance, and the Department may grant or refuse such an application; and the provisions of this Ordinance other than sections 2 and 25 shall apply in such circumstances, and shall be construed accordingly.

(5) Sections 15, 17 and 19 shall not apply during the transitional period in respect of any employment agreement in force at the start of the transitional period.

(6) In sections 16, 17 and 22, references to "**supply**" shall not include an ongoing supply during the transitional period.

### **Interpretation.**

**31.** (1) In this Ordinance, unless the context otherwise requires –

"**agency**" means an employment agency as defined in section 4(1) of the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 ("**the Law**"), but does not include a business where the services provided are limited exclusively to the provision of information; and includes a person carrying on an agency, and in the case of a person who carries on both an agency and an employment business means such a person in his capacity in carrying on the agency,

"**approved inspector**" has the meaning given in section 4(4),

"**country**" includes territory,

"**the Court**" means the Royal Court of Guernsey sitting as an Ordinary Court,

"**employment business**" means an employment business as defined in section 4(1) of the Law and includes a person carrying on an employment business, and in the case of a person who carries on both an employment business and an agency means such a person in his capacity in carrying on the employment business,



"**enactment**" means any Law, Ordinance or subordinate legislation,

"**Guernsey**" includes Herm and Jethou,

"**hirer**" means a person (including an employment business) to whom an agency or employment business introduces or supplies or holds itself out as being capable of introducing or supplying a seafarer for the purpose of that seafarer undertaking maritime work,

"**maritime work**" means work, employment or engagement that is on board, or ordinarily on board, a seagoing commercial ship, but excludes work as an armed security guard on board a ship,

"**seafarer**" means a person who is seeking maritime work,

"**Seafarer Medical Certificate**" means a medical fitness certificate issued under the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010<sup>d</sup>,

"**seagoing commercial ship**" means a ship, other than a pleasure vessel, which navigates in waters other than exclusively inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any

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<sup>d</sup>

United Kingdom S.I. 2010 No. 737.

enactment and having legislative effect,

**"uniform scale of fines"** means the uniform scale of fines in force from time to time under the Uniform Scale of Fines (Guernsey) Law, 1989<sup>e</sup>,

and other words and expression which are defined in the Law have the same meanings as in that Law.

(2) The Interpretation (Guernsey) Law, 1948<sup>f</sup> applies to the interpretation of this Ordinance throughout Guernsey and Alderney.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) For the avoidance of doubt, references in this Ordinance to Regulation 1.4 of the Convention include references to that Regulation's associated Standard, A1.4.

(5) In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Ordinance, the question shall be determined in the first instance by the Department after consultation with such shipowners' and seafarers' organisations as it considers relevant.

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<sup>e</sup> Ordres en Conseil Vol. XXXI, p. 1989.

<sup>f</sup> Ordres en Conseil Vol. XIII, p. 355.

**Meaning of "pleasure vessel"**

32. (1) Subject to subsections (4) and (5), for the purposes of this Ordinance a "**pleasure vessel**" is a vessel of a type described in subsection (2), (3) or (6).

(2) The first type of pleasure vessel is a vessel -

- (a) wholly owned by an individual and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or
- (b) wholly owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends,

which is on a voyage or excursion in respect of which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion.

(3) The second type of pleasure vessel is a vessel wholly owned by or on behalf of an unincorporated association formed for the purposes of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that unincorporated association or their immediate families, and for the use of which any charges levied are paid into the funds of, and applied for the general use of, that unincorporated association.

(4) A vessel does not fall within subsection (2) or (3) if payments other than those mentioned in those paragraphs are made by or on behalf of the users of the vessel, other than the owner of the vessel.

(5) In subsections (2) and (3) "**immediate family**" means, in relation to an individual, the spouse or civil partner of the individual, and a sibling, ancestor or lineal descendant of that individual or of that individual's spouse or civil partner.

(6) The third type of pleasure vessel is a vessel described as a pleasure vessel, or as a non-commercial vessel, in the register of ships of its flag state, whether or not it falls within either subsection (2) or (3).

**Extent.**

33. This Ordinance has effect in the islands of Guernsey and Alderney.

**Citation.**

34. This Ordinance may be cited as the Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Guernsey and Alderney) Ordinance, 2013.

**Commencement.**

35. This Ordinance shall come into force on a date to be appointed by Order of the Department.

## SCHEDULE

## Section 18

**Particulars to be included in an agency's or employment business' records relating to hirers.**

1. Date application received
2. Hirer's name and address, and location of employment if different
3. Details of the position(s) the hirer seeks to fill
4. Duration or likely duration of work
5. Experience, training, ability, qualifications and authorisation required by the hirer, by law, or by any professional body; and any other conditions attaching to the position(s) the hirer seeks to fill
6. The terms offered in respect of the position(s) the hirer seeks to fill
7. Copy of the terms between the agency or employment business and the hirer, and any document recording any variation thereto
8. Names of seafarers introduced or supplied
9. Details of each resulting engagement and date from which it takes effect
10. Dates of requests by the agency or employment business for fees or other payment from the hirer and of receipt of such fees or other payments, and copies of statements or invoices.

**Particulars to be included in an agency's or employment business' records relating to seafarers.**

1. Date application received
2. Seafarer's name, address and date of birth
3. Any terms which apply or will apply between the agency or employment business and the seafarer, and any document recording any variation thereto
4. Details of the seafarer's training, experience, qualifications, and any authorisation to undertake particular work, and copies of any documentary evidence of the same obtained by the agency or employment business
5. Details of any requirements specified by the seafarer in relation to taking up employment
6. Names of hirers to whom the seafarer is introduced or supplied
7. Details of any resulting engagement and date from which it takes effect
8. Copy of any contract between the seafarer and any hirer entered into by the agency on the seafarer's behalf
9. Date application withdrawn or contract terminated (where applicable).

## **The Prison (Guernsey) Ordinance, 2013**

### ARRANGEMENT OF SECTIONS

#### PART I THE DEPARTMENT, THE GOVERNOR AND FUNCTIONARIES

##### *The Department*

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2. Department to allocate sufficient personnel and facilities.

##### *The Governor*

3. Governor's appointment and functions.

##### *Authorised persons*

4. General duties of authorised persons.
5. Other functions of authorised persons.
6. Standard of conduct and disciplinary guidance for authorised persons.
7. Authorised officers to have special powers and privileges.

##### *Members of the healthcare team*

8. Department to appoint healthcare team.
9. General duty of healthcare team.
10. Duties upon admission.
11. Duties in the event of illness, etc.
12. Duty to report issues and unfitness for prison.
13. Healthcare Manager to report on general health conditions.
14. Healthcare Manager may delegate functions.
15. Other functions of members of healthcare team.

##### *Agreements for services*

16. Agreements for provision of services to have effect.

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INDEPENDENT MONITORING PANEL

- 17. Establishment, purpose and other provisions.
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- 35. Prohibition of conveyance or supply of other things.
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*Unauthorised access to surrounding areas*

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- 52. Relationship with other enactments.
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SCHEDULE 1:	The Governor.
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SCHEDULE 6:	Enactments repealed or revoked.
SCHEDULE 7:	Consequential amendments.
SCHEDULE 8:	Transitional and savings provisions.

## The Prison (Guernsey) Ordinance, 2013

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> January, 2008<sup>a</sup> and in exercise of the powers conferred on them by sections 4, 5, 6, 7, 8 and 9 of the Prison (Enabling Provisions) (Guernsey) Law, 2010<sup>b</sup>, hereby order:-

### PART I

#### THE DEPARTMENT, THE GOVERNOR AND FUNCTIONARIES

##### *The Department*

##### **Department's functions.**

**1.** (1) In addition to its functions under section 4 of the Law, the Department must –

- (a) meet the costs and expenses and do all other acts necessary for the maintenance of the prison and all prisoners, and
- (b) as soon as practicable after the end of each calendar year, submit to the States the Governor's annual report together with the annual report of the Panel (as required under Schedule 3) for that calendar year.

(2) Any of the following persons may, on behalf of the Department, visit the prison and any prisoner at any reasonable time to enable or

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<sup>a</sup> Article XVI of Billet d'État No. I of 2008.

<sup>b</sup> Order in Council No. XIII of 2012.

assist the Department to discharge any of its functions under the Law –

- (a) the Minister or any other member of the Department,
  - (b) any employee of the States of Guernsey who is responsible to the Department, or
  - (c) any other person authorised in writing by the Department.
- (3) For the avoidance of doubt –
- (a) the Department may arrange for any of its functions under the Law to be performed by an officer responsible to the Department, under section 4 of the Public Functions Law, and
  - (b) despite anything to the contrary in section 4(4) of the Public Functions Law, the functions referred to in paragraph (a) include any functions of the Department in relation to –
    - (i) hearing or determining complaints or appeals by prisoners,
    - (ii) reviewing any decision or action of the Governor or any authorised person, or

- (iii) any disciplinary or conduct matter involving the Governor or any authorised person.

**Department to allocate sufficient personnel and facilities.**

2. (1) The Department must make available to the Governor and assign to the prison –

- (a) the number and description of authorised persons, and
- (b) the accommodation, equipment and other facilities,

that the Governor reasonably requires for the proper and effectual discharge of the Governor's functions.

(2) In discharging its duty under subsection (1)(a), the Department must pay due regard to the need to assign –

- (a) sufficient female authorised persons to meet the needs of female prisoners, and
- (b) sufficient male authorised persons to meet the needs of male prisoners.

(3) The Department must pay the costs of meeting the requirements of this section, and the salary and expenses of the Governor, from the general revenue account of the States.

*The Governor*

**Governor's appointment and functions.**

3. (1) Schedule 1 has effect in relation to the Governor.

(2) The Governor must establish procedures at the prison, including by issuing Prison Orders, making or issuing directions and orders and providing or arranging for training as necessary, in order to ensure –

(a) that where a duty is imposed on an authorised person under the Law, the duty is properly and effectually discharged, and

(b) that authorised persons are able to properly and effectually discharge their functions under the Law.

(3) For the avoidance of doubt –

(a) the Governor may arrange for any of the Governor's functions under the Law to be performed by an officer responsible to the Governor under section 4 of the Public Functions Law, and

(b) despite anything to the contrary in section 4(4) of the Public Functions Law, the functions referred to in paragraph (a) include any functions of the Governor in relation to –

(i) hearing or determining complaints or appeals by prisoners, or

- (ii) any disciplinary or conduct matter involving an authorised person.

*Authorised persons*

**General duties of authorised persons.**

4. (1) Subject to subsection (2), each authorised person is responsible to the Governor and must obey all lawful directions and lawful orders of the Governor.

(2) An authorised person must comply with –

- (a) this Ordinance, the regulations and Prison Orders, and
- (b) all standards of conduct issued by the Department under section 6(1).

**Other functions of authorised persons.**

5. The Department may make regulations prescribing the functions of any authorised person other than the Governor.

**Standards of conduct and disciplinary guidance for authorised persons.**

6. (1) The Department may by public notice issue (and from time to time amend or revoke) –

- (a) standards of conduct for authorised persons, and
- (b) guidance on disciplinary matters for authorised persons.

(2) Without limiting the generality of subsection (1)(b), any guidance issued may include the following –

- (a) principles and good practice to be taken into account, where authorised persons are suspected of misconduct or gross misconduct,
- (b) disciplinary or other action (including dismissal from employment or service or other penalties and sanctions) which may be taken against authorised persons who are found guilty of misconduct or gross misconduct, and
- (c) provision for appeals against findings or decisions made in connection with any disciplinary matter.

(3) For the avoidance of doubt, any standards of conduct or guidance issued under subsection (1) have effect despite any provision to the contrary in a contract or any other agreement (whether made or signed before, on or after the commencement date).

**Authorised officers to have special powers and privileges.**

7. (1) The Governor may in writing appoint any authorised person as an authorised officer for the purposes of the Law generally or any specified provision of the Law.

(2) An authorised officer acting in the course of the officer's duties has all the powers, authority, protection and privileges of a police officer.

*Members of the healthcare team*

**Department to appoint healthcare team.**

8. (1) The Department must appoint a healthcare team for the prison consisting of the following members –

- (a) one or more recognised medical practitioners, as medical officers,
- (b) one or more registered nurses, and
- (c) from amongst those medical officers and registered nurses, a Healthcare Manager.

(2) The Department must appoint at least one authorised nurse within the meaning of section 99(1) of the Mental Health (Bailiwick of Guernsey) Law, 2010<sup>c</sup>, as a member of the healthcare team under subsection (1)(b).

(3) A person may be appointed to the healthcare team to work in the prison or with prisoners either on a full-time or part-time basis.

(4) Any person appointed to the healthcare team –

- (a) if not already an authorised person prior to the appointment, is deemed to be an authorised person for the purposes of the Law, but

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<sup>c</sup> Order in Council No. XV of 2011.



- (b) must not be regarded as being employed by the Department or the States of Guernsey by reason only that the person is appointed as a member of the healthcare team.

**General duty of healthcare team.**

9. The members of the healthcare team are responsible for the care of the health of all prisoners.

**Duties upon admission.**

10. As soon as practicable after a prisoner is admitted into custody in the prison, and in any event within 24 hours of such admission (or any other prescribed period of time), a member of the healthcare team must –

- (a) examine the prisoner, and
- (b) record, as part of the prisoner's medical records, the following matters –
  - (i) any physical or mental illness, disorder or condition suffered or suspected to be suffered by the prisoner,
  - (ii) any infectious or contagious illness, disorder or condition suffered or suspected to be suffered by the prisoner,
  - (iii) any necessary measures to be taken in relation

to the illness, disorder or condition, including segregation of the prisoner,

- (iv) any apparent physical or mental impairment that might hamper rehabilitation of the prisoner,
- (v) whether the prisoner is physically capable of work,
- (vi) any other matter the member considers necessary or appropriate, in relation to the prisoner, and
- (vii) any prescribed matter.

**Duties in the event of illness, etc.**

11. If a prisoner complains of illness or being unwell to any authorised person –

- (a) the authorised person must immediately notify a member of the healthcare team or ensure that a member of the healthcare team is notified, and
- (b) a member of the healthcare team must visit and, if appropriate, examine the prisoner as soon as is reasonable in the circumstances, and in any event within 24 hours of the complaint being made.

**Duty to report issues and unfitness for prison.**

12. (1) A member of the healthcare team who –

- (a) is aware of any issue affecting the health of a prisoner,  
and
- (b) considers that the Governor should be made aware of  
the issue,

must promptly advise the Governor in writing of that issue.

(2) Without limiting the duty in subsection (1), a member of the healthcare team must promptly advise the Governor and the Department in writing if, at any time, the member considers that –

- (a) a prisoner's health has been or will be injuriously  
affected by continued imprisonment or by any  
condition of imprisonment,
- (b) the life of a prisoner will be endangered by  
imprisonment, or
- (c) a prisoner will not survive a sentence of imprisonment  
imposed on the prisoner or is totally or permanently  
unfit for imprisonment.

**Healthcare Manager to report on general health conditions.**

13. The Healthcare Manager must make an annual report to the Governor concerning the health and healthcare of prisoners, in accordance with regulations.

**Healthcare Manager may delegate functions.**

14. (1) The Healthcare Manager may arrange for any of the

Healthcare Manager's functions under the Law to be performed by any other member of the healthcare team.

(2) Where the Healthcare Manager arranges under subsection (1) for another member of the healthcare team to perform any functions, section 4(2), (3) and (5) of the Public Functions Law has effect as if –

- (a) the Healthcare Manager is the holder of a public office,
- (b) the member of the healthcare team concerned is an officer responsible to the Healthcare Manager, and
- (c) the member of the healthcare team concerned is duly authorised by the Healthcare Manager to perform those functions of the Healthcare Manager under section 4 of that Law.

**Other functions of members of healthcare team.**

**15.** The Department may make regulations prescribing other functions of members of the healthcare team.

*Agreements for services*

**Agreements for provision of services to have effect.**

**16.** (1) Subject to subsection (4), the Department may, on behalf of the States of Guernsey, enter into an agreement with any person (whether or not located in the Island) for the provision of services in the discharge of the functions of any authorised person under the Law.

(2) The services provided under an agreement may be carried

out–

- (a) by the person with whom the agreement is made, or
- (b) by personnel provided by that person.

(3) A person discharging the functions of any authorised person under an agreement –

- (a) is deemed to be the authorised person concerned for the purposes of the Law,
- (a) has all the powers, authority, protection and privileges of the authorised person concerned, and
- (b) is subject to the duties and obligations of the authorised person concerned under the Law, subject to section 46(4).

(4) An agreement must not provide for the discharge of the functions of the Governor except whilst a declaration of emergency is in force for the prison.

(5) For the avoidance of doubt, an agreement may be made for the provision of services on a voluntary or any other basis.

(6) In this section, "**agreement**" means an agreement made under subsection (1) .

## PART II

### INDEPENDENT MONITORING PANEL

**Establishment, purpose and other provisions.**

17. (1) The States must appoint the Chairman and other members of a panel to be known as the Independent Monitoring Panel, from persons nominated by the Department.

(2) The purpose of the Panel is to monitor –

(a) whether the objects of the prison system in section 2 of the Law are being met, and

(b) whether the prison is being administered in accordance with the principles in section 3 of the Law.

(3) Schedule 3 has effect in relation to the Panel and its members.

**Other functions of the Panel and its members.**

18. The Department may make regulations prescribing any other function of the Panel or its members.

**PART III**

**CLASSIFICATION AND ACCOMMODATION OF PRISONERS**

**Age and classification of prisoners.**

19. (1) The Governor must classify a prisoner according to the following –

(a) age,

- (b) gender,
- (c) whether the prisoner is an unconvicted prisoner,
- (d) whether the prisoner is a vulnerable prisoner,
- (e) the security risk posed by the prisoner, and
- (f) any other prescribed criteria.

(2) A prisoner's classification –

- (a) must be made upon the prisoner's admission into custody in the prison or as soon as practicable afterwards, and
- (b) must be reviewed as often as necessary.

(3) Prisoners must be classified into one of these four age categories –

- (a) 21 years of age or above,
- (b) 18 years of age or above but under 21 years of age,
- (c) 14 years of age or above but under 18 years of age, and
- (d) under 14 years of age.

(4) No person under the age of 12 years may be admitted into custody, or kept in custody, in the prison.

(5) In classifying prisoners according to gender, the classification of any prisoner with a gender identity disorder or similar condition must be made in consultation with a medical officer and the prisoner concerned.

(6) In classifying prisoners according to security risk, the following matters must be taken into account –

- (a) the offence or matter in respect of which the prisoner is remanded or committed to prison, and
- (b) the period of time for which the prisoner is remanded or committed to prison.

**Governor may set aside parts of the prison.**

**20.** The Governor may set aside parts of the prison for particular purposes, including for the accommodation of prisoners classified into a particular category.

**Appropriate accommodation of prisoners.**

**21.** (1) Subject to subsections (3) and (4), the Governor must assign accommodation at the prison to each prisoner and determine the conditions under which the prisoner is held, as he considers best meets the following objectives –

- (a) prisoners should be kept safe,
- (b) the accommodation and conditions of each prisoner should be appropriate to the security risk category of



the prisoner, and

- (c) prisoners should be kept in accommodation and under conditions that promote pro-social and law-abiding behaviour, both in custody and after release, and reduce the likelihood of their reoffending.

(2) The Governor must review a prisoner's accommodation, and the conditions under which the prisoner is held, at regular intervals and as frequently as the Governor considers necessary to meet the objectives in subsection (1).

(3) A prisoner must not to be held in conditions of isolation or near isolation, unless –

- (a) expressly authorised by or under this Ordinance or the regulations, or
- (b) the prisoner consents to this.

(4) Female prisoners must be accommodated apart from male prisoners, either in separate buildings, or in separate parts of the same building.

(5) Nothing in subsection (4) prevents a female prisoner or a male prisoner electing to take part in vocational or educational activities in which both categories of prisoners participate.

**Matters to consider when allocating accommodation.**

22. In carrying out the duties in section 21(1) and (2), the Governor must take into account the following matters –

- (a) the security risk posed by the prisoner,
- (b) whether the prisoner is a vulnerable prisoner,
- (c) the age of the prisoner,
- (d) the gender of the prisoner, and
- (e) the prisoner's personal circumstances, including the prisoner's record of offending.

**Different regimes based on classification.**

23. (1) Subject to subsection (2) the Department may make regulations prescribing different regimes and different treatment for prisoners based on their classification.

(2) So far as is reasonably practicable, the categories of prisoners under 21 years of age must be treated in a manner that takes into account their status and needs.

(3) So far as is reasonably practicable and as applicable in the context of a prison regime, a person exercising or performing functions under the Law must take into account the child welfare principles in section 3 of the Children (Guernsey and Alderney) Law, 2008<sup>d</sup> and the child welfare checklist in section 4 of that Law when making any decision in relation to a prisoner under 18 years of age.

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<sup>d</sup> Order in Council No. XIV of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, pp. 480 and 709.

**Babies.**

24. (1) If a female prisoner wishes to keep her baby with her in prison, the Governor may request the Secretary of State to make an order under paragraph 1 of Schedule 1 to the Crime (Sentences) Act, 1997<sup>e</sup> for the transfer of the prisoner to a prison with suitable facilities for a mother and baby in the United Kingdom.

(2) Without limiting subsection (1), the Governor may at any time permit a female prisoner to keep her baby with her in the prison in the Island for a period of time determined by the Governor and subject to any condition the Governor considers fit, unless the prisoner has been transferred to a prison with suitable facilities for a mother and baby in the United Kingdom.

(3) In making a decision under subsection (1) or (2), the Governor must–

- (a) have particular regard to the best interests of the baby, and
- (b) consult the female prisoner concerned, members of the healthcare team, and officers of the Health and Social Services Department and of any other Department the Governor considers appropriate.

(4) If the Governor permits a female prisoner to keep her baby with her in the prison in the Island, the Governor must ensure that –

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<sup>e</sup> An Act of Parliament (Chapter 43 of 1997).

- (a) everything necessary for the baby's maintenance and care is provided to the mother and baby, and
  - (b) any search of the baby is conducted with sensitivity and in accordance with appropriate procedures and training.
- (5) A decision of the Governor under this section –
- (a) subject to paragraphs (b) and (c), must be made in accordance with any Prison Orders issued for this purpose,
  - (b) is subject to any prescribed restriction or limitation, and
  - (c) is subject to review by the Department in accordance with any regulations made for this purpose.

#### PART IV

#### PRISONERS' ENTITLEMENTS

##### **Governor to appoint coordinating chaplain.**

**25.** (1) The Governor must appoint a faith leader as coordinating chaplain for the prison.

(2) The Department may make regulations prescribing the functions of a coordinating chaplain.

(3) In subsection (1), "**faith leader**" means any generally recognised leader of a religion, denomination or spiritual belief.

**Other entitlements.**

26. The Department may make regulations prescribing any other entitlements of prisoners.

**Prisoners to be informed of entitlements and other matters.**

27. (1) An authorised person must provide each prisoner with written information about the following –

- (a) the prisoner's entitlements,
- (b) the procedures for making requests and complaints, and
- (c) any other prescribed matter.

(2) The written information referred to in subsection (1) must be provided to the prisoner –

- (a) upon the prisoner's admission into custody in the prison, and upon the prisoner's request at any reasonable time, and
- (b) so far as is reasonably practicable, in a language and in terms that the prisoner understands.

(3) An authorised person must ensure that a suitable person (with the help of a translator if necessary and practicable) explains the written information to the prisoner in any case where the prisoner –

- (a) is under 18 years of age, or
- (b) cannot read or otherwise appears to have difficulty understanding the information.

(4) The Department may make regulations to require an authorised person to make any information (including the information specified in subsection (1)) or document available to prisoners in a prescribed manner.

## PART V

### REMISSION AND TEMPORARY RELEASE

#### **Interpretation.**

**28.** (1) In this Part –

"**extended sentence**" means an extended sentence passed on a prisoner under section 3(2) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004<sup>f</sup>,

"**extension period**" has the meaning given by section 3(2)(b) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004,

"**Parole Review Committee**" means the committee of that name established under the Parole Review Committee Ordinance,

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<sup>f</sup> Order in Council No. IX of 2005.

1991<sup>g</sup>,

"**prisoner**" refers to any convicted prisoner, and

"**term of imprisonment**", in relation to any prisoner –

- (a) includes any term of youth detention to which the prisoner has been sentenced, but
- (b) excludes any extension period within an extended sentence.

(2) For the purposes of calculating a prisoner's term of imprisonment –

- (a) any terms of imprisonment which are wholly or partly concurrent are to be treated as a single term, and
- (b) in the case of consecutive sentences, the term of imprisonment is the aggregate of the terms of imprisonment to which that prisoner has been sentenced.

#### **Remission of sentences.**

**29.** (1) Subject to subsections (2) and (3), the Governor must grant any prisoner who has served two-thirds of a term of imprisonment imposed on the

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<sup>g</sup> Recueil d'Ordonnances, Tome XXV, p. 230; as amended by Order in Council No. IX of 2005; Recueil d'Ordonnances Tome XXVI, p. 150 and Tome XXIX, p. 448.

prisoner remission of the remaining portion of the term of imprisonment.

(2) A remission –

- (a) must not result in the prisoner's term of imprisonment being reduced to less than 5 days, and
- (b) is subject to forfeiture of remission in accordance with any prison regulations, upon the prisoner being found guilty of a disciplinary offence.

(3) Where a prisoner's date of release under this section would otherwise fall on a non-working day, the Governor may release the prisoner on the nearest working day before that date of release.

(4) For the avoidance of doubt, a release on remission under this section–

- (a) in the case of a prisoner serving a sentence of imprisonment, must be regarded as a release from a sentence of imprisonment for the purposes of section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004,
- (b) in the case of a prisoner serving an extended sentence passed under the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, must be regarded as an unconditional release for the purpose of section 4(3) of that Law, and



- (c) in the case of a prisoner serving a sentence of youth detention, must be regarded as a release from a sentence of youth detention for the purposes of section 4 of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990<sup>h</sup>.

(5) For the avoidance of doubt, nothing in this section applies to a prisoner sentenced to life imprisonment.

**Temporary release licence.**

30. (1) The Governor may grant a prisoner a temporary release on licence from the prison, for any purpose specified in subsection (2) –

- (a) for a period of time determined by the Governor, and
- (b) subject to any conditions specified by the Governor on the licence, and any other prescribed conditions.

(2) Subsection (1) refers to the following purposes –

- (a) for compassionate reasons or for the purpose of receiving medical treatment,
- (b) to engage in employment or voluntary work,

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<sup>h</sup> Ordres en Conseil Vol. XXXII, p. 106; as amended by Order in Council No. III of 2012 and Recueil d'Ordonnances Tome XXIX, p. 406; see also Order in Council No. IX of 2005.

- (c) to receive instruction or training that cannot reasonably be provided in the prison,
- (d) to enable the prisoner to participate in any proceedings before any court or inquiry,
- (e) to assist any police officer or customs or immigration officer in any enquiries,
- (f) to facilitate the prisoner's transfer between prisons,
- (g) to assist the prisoner in maintaining family ties or in that prisoner's transition from prison life to freedom, and
- (h) any other prescribed purpose.

(3) A temporary release licence must not be granted unless the Governor is satisfied that there would not be an unacceptable risk of the prisoner –

- (a) committing an offence whilst on temporary release, or
- (b) failing to comply with any condition of the licence.

(4) A temporary release licence must not be granted if, in the Governor's opinion, the temporary release would be likely to undermine public confidence in the administration of justice, having regard to –

- (a) the period or proportion of the prisoner's term of imprisonment that has already been served,

- (b) the frequency with which that prisoner has been granted temporary release (both under this Ordinance and before the commencement date),
- (c) whether that prisoner has ever been convicted of an offence whilst out on temporary release on any previous occasions, and
- (d) any other relevant matters.

(5) A decision to grant or refuse a temporary release licence –

- (a) subject to paragraphs (b) and (c), must be made in accordance with any Prison Orders issued for this purpose,
- (b) is subject to any prescribed restriction or limitation, and
- (c) is subject to review by the Department in accordance with any regulations made for this purpose.

(6) The Governor may recall to prison any prisoner released under this section, whether or not any condition of the prisoner's temporary release licence has been breached, but, so far as reasonably practicable, must give the prisoner a written summary of the reasons for the recall.

(7) A temporary release licence must not be regarded as –

- (a) a release from a sentence of imprisonment for the purposes of section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004,
- (b) an unconditional release for the purpose of section 4(3) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, that Law, or
- (c) a release from a sentence of youth detention for the purposes of section 4 of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.

## PART VI OFFENCES AND PENALTIES

### *Escape, etc.*

#### **Escape by use of force.**

31. A prisoner commits an offence who, by the use of force, escapes –

- (a) from the prison, or
- (b) from the legal custody of the Governor.

#### **Escaping or absconding without force.**

32. A prisoner commits an offence who, other than by the use of force, escapes or absconds –

- (a) from the prison, or

- (b) from the legal custody of the Governor.

**Assisting an escape.**

33. A person commits an offence who, with intent to facilitate the escape or abscondment of any prisoner –

- (a) brings, throws or otherwise conveys any thing into the prison, the green area or the yellow area,
- (b) conceals or deposits any thing anywhere in the prison, the green area or the yellow area, or
- (c) supplies any thing to a prisoner.

*Unauthorised conveyance, supply, use, etc. of things*

**Prohibition of conveyance or supply of prohibited things.**

34. Subject to section 37, a person commits an offence who –

- (a) brings, throws or otherwise conveys a prohibited thing into the prison,
- (b) conceals or deposits a prohibited thing anywhere in the prison, or
- (c) supplies a prohibited thing to a prisoner.

**Prohibition of conveyance or supply of other things.**

35. Subject to section 37, a person commits an offence who –

- (a) brings, throws or otherwise conveys any thing, other than a prohibited thing, into the prison,
- (b) conceals or deposits any thing, other than a prohibited thing, anywhere in the prison, or
- (b) supplies any thing, other than a prohibited thing, to a prisoner.

**Prohibition on allowing conveyance, supply or use of prohibited things.**

**36.** Subject to section 37, an authorised person commits an offence who allows any prohibited thing to be –

- (a) brought, thrown or otherwise conveyed into the prison,
- (b) concealed or deposited anywhere in the prison,
- (c) supplied to a prisoner, or
- (d) used in the prison or by a prisoner.

**Exemption for authorised conduct.**

**37.** A person is exempt from the offence created in any of sections 34, 35 and 36 to the extent that –

- (a) the person is acting in the exercise or performance of a function conferred on that person by this Ordinance, any regulation or any Prison Order, or

- (b) the conduct which is the subject of the prohibition is otherwise lawfully required or authorised.

*Unauthorised access to surrounding areas*

**Prohibition of unauthorised access to prison site.**

38. (1) Subject to subsection (2), a person commits an offence who is found in or upon, or leaves a vehicle in or upon –

- (a) a green area, or
- (b) a yellow area.

(2) Subsection (1) does not apply if the person has lawful authority or reasonable excuse for being so found or (as the case may require) for so leaving the vehicle.

*Penalties and notice*

**Penalties for offences.**

39. (1) A person who commits an offence under section 31 is liable –
- (a) on summary conviction to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding 2 years, or both, and
  - (b) on conviction on indictment to a fine, to imprisonment for a term not exceeding 7 years, or both.

(2) A person who commits an offence under section 32 or 33 is liable –

(a) on summary conviction to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding 2 years, or both, and

(b) on conviction on indictment to a fine, to imprisonment for a term not exceeding 5 years, or both.

(3) A person who commits an offence under section 34 or 36 is liable on summary conviction or conviction on indictment to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding two years, or both.

(4) A person who commits an offence under section 35 is liable on summary conviction or conviction on indictment to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding six months, or both.

(5) A person who commits an offence under section 38(1)(a) is liable on summary conviction to a fine not exceeding level 3 on the uniform scale, to imprisonment for a term not exceeding six months, or both.

(6) A person who commits an offence under section 38(1)(b) is liable on summary conviction to a fine not exceeding level 1 on the uniform scale.

#### **Display of penalties.**

**40.** The Department must cause to be affixed in a conspicuous place outside the prison a notice of the penalties to which any person committing an offence under any of sections 31 to 36, or section 38, may be liable.



PART VII  
PRISONER CUSTODY AND DISCIPLINE

**Legal custody of prisoners.**

**41.** (1) Subject to subsection (2), a prisoner is at all times deemed to be in the legal custody of the Governor, even whilst –

- (a) the prisoner is outside the prison on a temporary release licence (whether that prisoner is working or otherwise),
- (b) the prisoner is being taken to or from the prison,
- (c) the prisoner is being taken to or from any place to which that prisoner is lawfully required or authorised to be taken, or
- (d) the prisoner is being kept in the custody or under the control of any person, for the purposes of being taken to or from any place to which that prisoner is lawfully required or authorised to be taken.

(2) Nothing in subsection (1) applies to a prisoner who is lawfully at large for the time being –

- (a) after being granted remission under section 29, or
- (b) in accordance with the conditions of a temporary release licence.

**Custody while outside the prison.**

**42.** (1) A prisoner in the legal custody of the Governor must, at all times while outside the prison –

- (a) be kept in the custody of an authorised officer, a customs or immigration officer, or a police officer, and
- (b) so far as practicable, be protected from public view, insult and curiosity.

(2) While a person is, or is supposed to be, kept in the custody of an authorised officer or a customs or immigration officer under subsection (1)(a), the officer concerned has all the powers, authority, protection and privileges of a police officer.

**Disciplinary offences.**

**43.** (1) A prisoner commits a disciplinary offence in the circumstances specified in Schedule 4.

(2) The Department may make regulations in connection with a disciplinary offence or suspected disciplinary offence, including regulations –

- (a) amending or revoking any part of Schedule 4,
- (b) deeming any conduct or other matter, whether or not occurring in the Island, to constitute a disciplinary offence for the purposes of the Law,
- (c) setting out the procedure for dealing with a suspected

disciplinary offence,

- (d) providing for the holding of an inquiry into a suspected disciplinary offence,
- (e) providing for the award of any punishment where a prisoner is found guilty of a disciplinary offence,
- (f) without limiting the generality of paragraph (e), providing for forfeiture of remission of sentence as punishment for any disciplinary offence, and
- (g) providing for appeals against the determination of a charge of a disciplinary offence.

## PART VIII

### GENERAL

#### **Procedures on death, or serious injury from attempted suicide.**

**44.** Schedule 5 has effect where any prisoner in the legal custody of the Governor –

- (a) dies, or
- (b) appears to have attempted suicide, and suffers incapacitation or any other serious injury as a result.

#### **Regulations may authorise taking of bodily samples, etc.**

**45.** The Department may make regulations to authorise any authorised person to require a prisoner to provide a sample of urine, breath or other prescribed

bodily matter or substance, for the purpose of determining or ascertaining –

- (a) whether the prisoner has any prescribed thing in that prisoner's body, or
- (b) whether the prisoner has or may have committed a disciplinary offence.

**Declaration of emergency.**

**46.** (1) This section applies where the Governor reasonably believes that a situation exists at the prison that poses a serious threat to –

- (a) prison security, or good order and discipline, in the prison, or
- (b) the safety of a prisoner or any other person in the prison.

(2) Where this section applies, the Governor, with the Department's approval, may by public notice make a declaration of emergency, specifying –

- (a) that an emergency exists in the prison for a specified period not exceeding 3 days, and
- (b) that this Ordinance, the regulations and the Prison Orders have effect to the extent consistent with any action taken with regard to the emergency.

(3) Whilst a declaration of emergency is in force, the Governor

may do all or any of the following –

- (a) order that any activity in, or access to, the prison, be restricted,
  - (b) order that prisoners' entitlements and privileges or a specified prisoner's entitlements and privileges be withheld,
  - (c) pursuant to any agreement made under section 17, authorise any personnel to discharge the functions of any authorised person (including the Governor),
  - (d) authorise police officers to discharge the functions of any authorised person, under the direction of the senior police officer present, or
  - (e) authorise any equipment or other thing to be brought into and used in the prison.
- (4) Whilst a declaration of emergency is in force –
- (a) this Ordinance, the regulations and the Prison Orders have effect consistent with actions taken with regard to that emergency, and
  - (b) the duties and obligations of all authorised persons under the Law are modified to the extent provided in paragraph (a).

(5) A police officer discharging the functions of an authorised person under subsection (3)(d) –

- (a) has all the powers, authority, protection and privileges of the authorised person concerned, and
- (b) is subject to the duties and obligations of the authorised person concerned under the Law, subject to subsection (4)(b).

(6) For the avoidance of doubt, the power to make a declaration under this section includes the power to amend or revoke such a declaration in a similar manner, on similar grounds and subject to the approval of the Department.

(7) In this section, "**Governor**" (except in subsection (3)(c)) –

- (a) means the Governor of the prison, but
- (b) if the Governor is absent, incapacitated or otherwise unable to discharge the Governor's functions, and no Governor grade is available to discharge the Governor's functions, means the Chief Officer of the Department.

**Exclusion of liability.**

47. (1) Subject to subsections (3) and (4), no person within subsection (2) is to be –

- (a) liable in damages, or

- (b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done after the commencement date in the discharge or purported discharge of the person's functions under the Law, unless the thing was done or omitted to be done in bad faith.

- (2) The persons within this subsection are -

- (a) any Panel member,
- (b) any member, officer or servant of the Department,
- (c) the Governor,
- (d) any authorised person, and
- (e) any other person discharging functions under the Law.

(3) Any liability in respect of any act or omission that would, but for subsection (1), attach to a person within subsection (2) attaches to the States of Guernsey.

(4) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a

result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>i</sup>.

**Confidentiality.**

**48.** (1) This section applies to any document or information from which an individual or body may be identified and which is acquired by any person within section 47(2) in carrying out that person's functions under the Law.

(2) A person within section 47(2) must not disclose any document or information to which this section applies without the consent of every individual who, and every body which, can be identified from that document or information, except to the extent that its disclosure –

(a) is expressly authorised or required by or under this Ordinance or any other enactment, or

(b) appears to that person to be necessary –

(i) to enable functions under the Law to be carried out,

(ii) for –

(A) the investigation, detection or prevention of crime or disciplinary offences, or

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<sup>i</sup> Ordres en Conseil Vol. XL p. 396; as amended by Order in Council No. I of 2005; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXVIII, p. 493 and Tome XXXIII, p. 617; G.S.I. No. 27 of 2006.



(B) the apprehension or prosecution of offenders,

(C) proceedings for any disciplinary offence,

within or outside the Island, or

(iii) in connection with a transfer or proposed transfer of any prisoner to or from the Island,

(iv) in connection with the discharge of any international obligation to which the Bailiwick may from time to time be subject, or

(v) to comply with an order of a court of the Island.

(3) Without limiting subsection (2), any information communicated to a person within section 47(2) by a committee of the States must, if that committee so requests, be regarded as confidential by that person; and that person must not disclose such information except –

(a) to comply with an order of a court, or

(b) with the leave of that committee, for any reason set out in subsection (2)(a) or (b).

(4) A person who, without reasonable excuse, discloses any information or who causes or permits the disclosure of any information in contravention of this section is guilty of an offence and liable on summary

conviction or conviction on indictment to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding six months, or both.

(5) For the avoidance of doubt, CCTV material relating to a prisoner is to be regarded as information from which the prisoner can be identified, for the purposes of subsection (1).

(6) In this section –

"**CCTV material**" means material obtained by means of an overt closed circuit television system, and

"**disciplinary offence**" means any offence against discipline by a prisoner, an authorised person, or any other person.

**Department authorised to make regulations.**

**49.** (1) Subject to subsections (3) and (4), the Department may at any time make regulations –

- (a) prescribing any matter which it is authorised to prescribe under any provision of this Ordinance, or
- (b) in relation to any other matter for which an Ordinance may be made under the Law (including, for the avoidance of doubt, any matter specified in Schedule 1 to the Prison (Enabling Provisions) (Guernsey) Law, 2010).

(2) Without limiting the generality of subsection (1) and section 8(3) of the Law, regulations made under this Ordinance may empower the

Department, any other department of the States, any other body or authority (including, without limitation, any court in the Island), the Governor or any other person to –

- (a) make or issue subordinate legislation, or
- (b) issue codes or guidance,

in relation to any matter for which an Ordinance may be made under the Law.

(3) Regulations made under this Ordinance –

- (a) must not authorise the imposition on conviction for any offence of a term of imprisonment exceeding six months, and
- (b) must not exclude or limit the liability incurred by any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of that person's functions.

(4) For the avoidance of doubt, a regulation made under this Ordinance has no effect to the extent that it contradicts any provision of this Ordinance.

**Governor authorised to issue Prison Orders.**

**50.** (1) Subject to subsections (2) and (3), the Governor may issue a Prison Order by giving written notice of it within the prison in any manner the Governor thinks fit.

(2) The Governor may certify any Prison Order to be

"Restricted" on grounds that disclosure of it to any prisoner or the public poses or is likely to pose –

- (a) a significant security risk in relation to any prisoner,
- (b) a risk of interfering with or compromising any action or other conduct authorised in accordance with Part II of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003<sup>j</sup>, or
- (c) a risk of jeopardising any criminal investigation.

(3) The Governor may issue a Prison Order that is certified to be "Restricted" under subsection (2) by giving written notice of it to all authorised persons or only those authorised persons the Governor considers appropriate.

(4) A notice under subsection (1) or (3) must specify –

- (a) the date and time of its issue, and
- (b) the date and time when the Prison Order concerned is to come into force (unless it is to come into force on the date and at the time the notice was issued).

(5) A Prison Order has no effect to the extent that it contradicts –

- (a) any provision of this Ordinance, or

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<sup>j</sup> Ordres en Conseil Vol. XLIII(2), p. 894, as amended by Recueil d'Ordonnances Tome XXIX, p. 406 and G.S.I Nos. 25 and 26 of 2004.

(b) any regulation.

(6) Directions given under section 4(3) of the Law may include a direction to the Governor to revoke, but not to amend, any Prison Order.

(7) In this section, "**Prison Order**" includes any amendment or revocation of a Prison Order.

**General provisions as to regulations, Prison Orders, etc.**

**51.** (1) Any regulation, Prison Order or other subordinate legislation made or issued under the Law –

(a) may be amended or revoked by subordinate legislation of the same kind subsequently made or issued under the Law, and

(b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

(2) A power conferred by any provision of the Law to make or issue regulations, Prison Orders or other subordinate legislation may be exercised–

(a) in relation to all cases to which the power extends, or 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 make, as respects the cases in relation to which it is exercised –

- (i) the full provision to which the power extends, or any lesser provision (whether 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 for different purposes,
- (iii) any such provision either unconditionally or subject to any conditions specified in the subordinate legislation.

(3) Any regulation made or issued under the Law must be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulation be annulled, then it ceases to have effect, but without prejudice to anything done under it or to the making of new regulations.

**Relationship with other enactments.**

**52.** (1) Unless otherwise expressly provided, nothing in this Ordinance, the regulations, Prison Orders or any other subordinate legislation made or issued under the Law limits or restricts –

- (a) any power, duty or obligation conferred or imposed on any person by any other enactment, or
- (b) any offence created by or under the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of

Guernsey) Law, 2006<sup>k</sup>, the Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007<sup>l</sup> or any other enactment.

(2) For the avoidance of doubt, neither a Prison Order nor a declaration of emergency is to be regarded as a statutory instrument for the purposes of the Guernsey Statutory Instruments (Registration) Ordinance, 1949<sup>m</sup>.

**Persons prescribed to be prisoners.**

53. For the avoidance of doubt, the following persons are prescribed to be prisoners for the purposes of the Law –

- (a) any person serving a sentence of youth detention at the prison, and
- (b) any person kept in secure accommodation at the prison.

**Meaning of "convicted prisoner" and "unconvicted prisoner".**

54. (1) A "convicted prisoner" means –

- (a) a prisoner serving a sentence of imprisonment or youth detention imposed by a court following conviction for an offence, or

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<sup>k</sup> Order in Council No. XII of 2006; as amended by No. XVI of 2009. See also Ordres en Conseil Vol. XXXVI, p. 639.

<sup>l</sup> Order in Council No. I of 2008.

<sup>m</sup> Recueil d'Ordonnances Tome X, p. 16.

(b) a prisoner in default.

(2) An "**unconvicted prisoner**" –

(a) means any prisoner other than a convicted prisoner,  
and

(b) includes –

(i) a person kept in secure accommodation at the  
prison,

(ii) a person remanded in custody in the prison  
pending or in the course of the hearing of a  
charge for an offence,

(iii) a person detained in the prison under any  
enactment or prerogative relating to  
immigration control or the detention of aliens,

(iv) a person detained in the prison pending  
extradition, deportation or proceedings for  
extradition or deportation,

(v) a person detained in the prison pending return  
to any place under any law relating to fugitive  
offenders, or related proceedings,

(vi) a person detained in the prison to await the  
arrival of a military or police escort, and



- (vii) a person committed to a term of imprisonment for contempt of court.

**Interpretation.**

**55.** (1) In this Ordinance, unless the context requires otherwise –

**"authorised officer"**, in relation to any function –

- (a) means any person appointed as an authorised officer under section 7(1) for the purposes of the Law generally or the provision of the Law which confers or imposes the function, and
- (b) includes any person deemed to be an authorised officer in relation to the function concerned,

**"authorised person"** –

- (a) means –
  - (i) any employee of the States of Guernsey assigned to work in the prison or in relation to prisoners, or
  - (ii) any person, other than an employee of the States of Guernsey, contracted, engaged or otherwise authorised by the States of Guernsey or the Department to work in the prison or in relation to prisoners (including for the avoidance of doubt, on a voluntary basis),
- (b) for the avoidance of doubt, includes the Governor and

any Governor grade, and

- (c) includes any person deemed under this Ordinance or any regulations to be an authorised person,

**"cellular confinement"** means confinement to a cell under regulations,

**"classify"** –

- (a) means classify under section 19, and
- (b) includes any change of such classification,

and cognate terms are to be construed accordingly,

**"commencement date"** means the date specified for the commencement of this Ordinance in section 62,

**"controlled drug"** has the meaning given by section 1(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974<sup>n</sup>,

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<sup>n</sup> Ordres en Conseil Vol. XXIV, p. 273, as amended by Vol. XXVIII, p. 307; Vol. XXXI, pp. 47 and 278; Vol. XXXIII, p. 217; Vol. XXXIV, p. 172; Vol. XXXVI, p. 396; Vol. XL, pp. 34 and 131; Order in Council No. IV of 2006; No. XIII of 2006; Recueil d'Ordonnances Tome XX, p. 271; Tome XXII, p. 483; Tome XXIV, p. 477; Tome XXV, pp. 38 and 325; Tome XXIX, p. 406; Ordinance No. XLIII of 2010 and Ordinance No. XXV of 2011; G.S.I. No. 19 of 1997; G.S.I. No. 5 of 2004; G.S.I. No. 42 of 2006; G.S.I. No. 20 of 2008; G.S.I. No. 22 of 2010; G.S.I. No. 33 of 2010; G.S.I. No. 82 of 2010; G.S.I. No. 44 of 2012; see also Recueil d'Ordonnances Tome XXVII, p. 247; Ordres en Conseil Vol. XXIX, p. 207.

**"convicted prisoner"** has the meaning given by section 54(1),

**"coordinating chaplain"** –

- (a) means a person appointed as coordinating chaplain under section 25, and
- (b) includes a person deemed under this Ordinance to be, or to have been appointed, coordinating chaplain,

**"court"** includes –

- (a) the Magistrate's Court,
- (b) the Royal Court,
- (c) the Court of Appeal,
- (d) Her Majesty in Council,
- (e) the Juvenile Court,
- (f) the Court of Alderney,
- (g) the Court of the Seneschal of Sark,
- (h) the European Commission of Human Rights,

- (i) the European Court of Human Rights,
- (j) the European Court of Justice, and
- (k) any other court or tribunal,

**"customs or immigration officer"** means –

- (a) an officer authorised under section 3 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>o</sup>, or
- (b) an immigration officer appointed under the Immigration Act 1971<sup>p</sup> as extended to the Bailiwick of Guernsey by the Immigration (Guernsey) Order 1993<sup>q</sup>,

**"declaration of emergency"** means a declaration of emergency made under section 46,

**"Department"** means the States of Guernsey Home Department,

**"disciplinary offence"** means a disciplinary offence committed by a prisoner under section 43 and Schedule 4,

**"enactment"** means any Act, Law, Ordinance, or subordinate legislation,

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<sup>o</sup> Ordres en Conseil Vol. XXIII, p. 573; to which there are amendments not relevant to this Ordinance.

<sup>p</sup> An Act of Parliament (Chapter 77 of 1971).

<sup>q</sup> United Kingdom S.I. 1993 No. 1796.

"**entitlement**", in relation to a prisoner, means anything to which the prisoner is expressly entitled under the regulations or this Ordinance,

"**function**" includes power or duty,

"**Governor**" –

- (a) means the person appointed Governor under section 3, and
- (b) includes a person deemed under this Ordinance to be, or to have been appointed, Governor,

"**Governor grade**" means a Deputy Governor or a person holding any other position allocated a Governor grade in the States officers' pay scale, other than the Governor,

"**Governor's annual report**" means the annual report of the Governor required under Schedule 1, containing the information specified in Schedule 2,

"**green area**" –

- (a) means any area (whether or not adjacent to the prison) prescribed as a green area in relation to the prison, and
- (b) includes any area deemed under this Ordinance to be a green area,

**"health"** means physical or mental health,

**"Healthcare Manager"** –

- (a) means the person appointed as Healthcare Manager under section 8(1)(c), and
- (b) includes a person deemed under this Ordinance to be, or to have been appointed, Healthcare Manager,

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

**"intoxicating liquor"** has the meaning given by section 101(1) of the Liquor Licensing Ordinance, 2006<sup>r</sup>,

**"the Island"** means the island of Guernsey,

**"the Law"** means the Prison (Enabling Provisions) (Guernsey) Law, 2010, and includes –

- (a) this Ordinance, and
- (b) any regulations, Prison Orders, or other subordinate legislation made under the Prison (Enabling Provisions) (Guernsey) Law, 2010 or this Ordinance,

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<sup>r</sup> Recueil d'Ordonnances Tome XXXI, p. 157; as amended by Ordinance No. XXIV of 2010; see also G.S.I. No. 54 of 2010; G.S.I. No. 10 of 2011; G.S.I. No. 20 of 2012 and G.S.I. No. 9 of 2013.

**"lawfully required or authorised"** means –

- (a) required or authorised by or under the Law or any other enactment,
- (b) required, authorised or permitted by the Governor, or under a direction or order of the Governor,

**"legal custody of the Governor"**, in relation to any prisoner, means a prisoner who is kept in the prison or is otherwise deemed to be in the legal custody of the Governor under section 41,

**"medical officer"** –

- (a) means any person appointed as a medical officer under section 8(1)(a), and
- (b) includes a person deemed under this Ordinance to be, or to have been appointed, a medical officer,

**"medicinal product"** has the meaning given by section 133(1) of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008,<sup>s</sup>

**"member of the healthcare team"** –

- (a) means a person appointed as a member of the healthcare team under section 8(1), and

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<sup>s</sup> Order in Council No. V of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, p. 541.

(b) includes –

- (i) any person deemed under this Ordinance to be, or to have been appointed, a medical officer, and
- (ii) any person deemed under this Ordinance to be, or to have been appointed, a member of the healthcare team,

**"Panel"** means the Independent Monitoring Panel appointed under Part II,

**"Panel member"** means a member of the Panel,

**"police officer"** means a member of the salaried police force of the Island,

**"prescribed"** means prescribed by or under regulations made by the Department under this Ordinance,

**"the prison" –**

- (a) means any land or building, or any part of any land or building, declared to be a prison under section 1 of the Law, and
- (b) includes any land or building deemed under this Ordinance to have been so declared,



**"Prison Order" –**

- (a) means a Prison Order issued by the Governor in accordance with section 50, and
- (b) includes any Order deemed under this Ordinance to be a Prison Order,

**"the Prison Plan"** means the plan which for the purpose of the Prison (Regulation of Access) Ordinance, 1990<sup>t</sup> was signed by the Bailiff on the 12th day of December, 1990, and lodged at the Greffe,

**"prisoner"** has the meaning given by section 9(1) of the Law and includes any person prescribed by section 53 to be a prisoner,

**"prisoner in default" –**

- (a) means a prisoner imprisoned by a court in default of payment of an amount ordered by the court to be paid by the prisoner in connection with that prisoner's conviction for an offence, and
- (b) for the avoidance of doubt, includes a prisoner imprisoned by a court in default of payment of an amount ordered to be paid under a confiscation order within the meaning of section 2(8) of the Drug

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<sup>t</sup> Recueil d'Ordonnances Tome XXV, p. 206.

Trafficking (Bailiwick of Guernsey) Law, 2000<sup>u</sup> or section 2(10) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>v</sup>,

**"prohibited thing"** means any thing declared by regulations to be a prohibited thing,

**"the Public Functions Law"** means the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>w</sup>,

**"public notice"**, in relation to a standard of conduct or guidance issued under section 6 or a declaration of emergency made under section 46, means to publish a notice in La Gazette Officielle, or in any other manner considered appropriate by the person issuing or making the standard, guidance or declaration –

- (a) to the effect that the standard, guidance or declaration concerned has been issued or made (or, as the case may be, amended or revoked), and
- (b) including information on where a copy of the standard,

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<sup>u</sup> Ordres en Conseil Vol. XL, p. 131; to which there are amendments not relevant to this Ordinance.

<sup>v</sup> Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005 and No. XV of 2007; Recueil d'Ordonnances Tome XXVIII, p. 266; Tome XXIX, pp. 112 and 406; Tome XXXII, p. 666; Tome XXXIII, pp. 157 and 535; G.S.I. No. 27 of 2002; G.S.I. No. 33 of 2007, G.S.I. No. 48 of 2008 and G.S.I. No. 12 of 2010; and certain sections of the Law are modified in their application to external confiscation orders by Recueil d'Ordonnances Tome XXVIII, p. 274.

<sup>w</sup> Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

guidance or declaration (or amendment or revocation) concerned can be viewed or obtained, unless the notice itself includes a copy of it,

**"recognised medical practitioner"** has the meaning given by the Doctors, Dentists and Pharmacists Ordinance, 1987<sup>x</sup>,

**"registered nurse"** means a person registered in the Nurses' Part, or the Specialist Community Public Health Nurses' Part of the register maintained by the Nursing and Midwifery Council under article 5 of the Nursing and Midwifery Order 2001<sup>y</sup>,

**"regulation"** means any regulation made by the Department under –

- (a) this Ordinance, or
- (b) any other Ordinance made under the Law,

**"secure accommodation"** means secure accommodation –

- (a) pursuant to an order of the Juvenile Court under Part IX of the Children (Guernsey and Alderney) Law, 2008 or section 1 of the Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997<sup>z</sup>, or

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<sup>x</sup> Recueil d'Ordonnances Tome XXIV, pp. 79, 238 and 262.

<sup>y</sup> United Kingdom S.I. 2002 No. 253.

<sup>z</sup> Ordres en Conseil Vol. XXXVII, p. 137; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

- (b) in the care of the Health and Social Services Department under section 14 or 15 of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008<sup>aa</sup>,

**"security risk"**, in relation to any prisoner, means –

- (a) the risk that the prisoner would present to the community if that prisoner were to escape from custody,
- (b) the risk that the prisoner would try to escape, either on that prisoner's own or with assistance from another person,
- (c) the risk that the prisoner presents to good order and discipline in the prison, and
- (d) the physical risk the prisoner presents to other prisoners, authorised persons, and any other person that prisoner is likely to come into contact with, including visitors,

**"subordinate legislation"** –

- (a) means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made

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<sup>aa</sup> Order in Council No. VI of 2009. See also Ordres en Conseil Vol. XXIX, p. 207 and Order in Council No. XVIII of 2009.

under any enactment and having legislative effect, and

- (b) for the avoidance of doubt, includes Prison Orders and any declaration of emergency,

**"supply"** includes –

- (a) to sell, give, exchange, distribute, convey, consign, deliver, furnish, or transfer possession of or title to, or arrange, offer, or agree to do so, whether for a fee or other consideration or without charge,
- (b) to have in one's possession for the purpose of doing any of the things specified in paragraph (a), or
- (c) to leave in any place (whether inside or outside the prison) with a view to its coming into the possession of a person,

**"temporary confinement"** means temporary confinement under regulations,

**"temporary release licence"** means a licence granted under section 30 for the temporary release of a prisoner,

**"thing"** includes –

- (a) any substance, including any liquid or gaseous substance, and

- (b) any aircraft, vehicle or vessel,

**"tobacco product"** has the meaning given by section 5 of the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010<sup>bb</sup> (which, for the purposes of this definition, is to be regarded as having come into force on the commencement date),

**"unconvicted prisoner"** has the meaning given by section 54(2),

**"vehicle"** –

- (a) means any vehicle intended or adapted for use on a public highway, and
- (b) includes a mechanically propelled vehicle, an animal drawn vehicle, a bicycle or a tricycle,

**"visitor"** includes any person visiting or working in the prison or any part of it, except an authorised person,

**"vulnerable prisoner"** means a prisoner who would be vulnerable to abuse, exploitation or violent assault, if housed with the general prisoner population,

**"working day"** means any day other than –

- (a) a Saturday, a Sunday, Christmas Day or Good Friday,

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<sup>bb</sup>

Order in Council No. IV of 2012.

or

- (b) a day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>cc</sup>,

**"yellow area" –**

- (a) means any area (whether or not adjacent to the prison) prescribed to be a yellow area in relation to the prison, and
- (b) includes any area deemed under this Ordinance to be a yellow area, and

**"youth detention" –**

- (a) means a sentence of youth detention passed by a court under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990, and
- (b) includes a suspended sentence of youth detention passed by a court under that Law and ordered by a court to take effect.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification),

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<sup>cc</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 507 and Vol. XXXV (1), p. 370.

extended or applied.

**Index of defined expressions.**

**56.** In this Ordinance, the expressions listed below are defined by the provisions specified.

<b>Expression</b>	<b>Interpretation Provision</b>
administer	Paragraph 3 of Schedule 4
agreement	Section 16(6)
authorised officer	Section 55(1)
authorised Panel member	Paragraph 12 of Schedule 3
authorised person	Section 55(1)
CCTV material	Section 48(6)
cellular confinement	Section 55(1)
civil proceedings	Paragraph 6 of Schedule 5
classify	Section 55(1)
commencement date	Section 55(1)
controlled drug	Section 55(1)
convicted prisoner	Section 54(1)
coordinating chaplain	Section 55(1)
court	Section 55(1)
customs or immigration officer	Section 55(1)
declaration of emergency	Section 55(1)
Department	Section 55(1)
disciplinary offence	Sections 48(6) and 55(1)
enactment	Section 55(1)
entitlement	Section 55(1)
extended sentence	Section 28(1)
extension period	Section 28(1)
faith leader	Section 25(3)
function	Section 55(1)
Governor	Section 55(1)
Governor grade	Section 55(1)
Governor's annual report	Section 55(1)
green area	Section 55(1)
health	Section 55(1)
Healthcare Manager	Section 55(1)
Her Majesty's Procureur	Section 55(1)
incident	Paragraph 6 of Schedule 5
intoxicating liquor	Section 55(1)



<b>Expression</b>	<b>Interpretation Provision</b>
the Island	Section 55(1)
the Law	Section 55(1)
lawfully required or authorised	Section 55(1)
legal custody of the Governor	Section 55(1)
medical officer	Section 55(1)
medicinal product	Section 55(1)
member of the healthcare team	Section 55(1)
nearest known relative	Paragraph 6 of Schedule 5
Panel	Section 55(1)
Panel member	Section 55(1)
Parole Review Committee	Section 28(1)
personal data	Paragraph 4(7) of Schedule 3
police officer	Section 55(1)
prescribed	Section 55(1)
presumed	Paragraph 3 of Schedule 4
the prison	Section 55(1)
Prison Order	Section 55(1)
the Prison Plan	Section 55(1)
prisoner	Sections 28(1) and 55(1)
prisoner in default	Section 55(1)
prohibited thing	Section 55(1)
Public Functions Law	Section 55(1)
public notice	Section 55(1)
racial group	Paragraph 3 of Schedule 4
racist	Paragraph 3 of Schedule 4
recognised medical practitioner	Section 55(1)
registered nurse	Section 55(1)
regulation	Section 55(1)
secure accommodation	Section 55(1)
security risk	Section 55(1)
smoke	Paragraph 3 of Schedule 4
subordinate legislation	Section 55(1)
supply	Section 55(1)
temporary confinement	Section 55(1)
temporary release licence	Section 55(1)
term of imprisonment	Section 28(1)
thing	Section 55(1)
tobacco product	Section 55(1)
unconvicted prisoner	Section 54(2)
vehicle	Section 55(1)
visitor	Section 55(1)
vulnerable prisoner	Section 55(1)

<b>Expression</b>	<b>Interpretation Provision</b>
working day	Section 55(1)
yellow area	Section 55(1)
youth detention	Section 55(1)

### **Repeals and revocations.**

**57.** The enactments listed in Schedule 6 are repealed or (as the case may require) revoked.

### **References to repealed or revoked legislation.**

**58.** (1) On and from the commencement date, unless the context requires otherwise, a reference in any enactment or document to an enactment repealed or revoked by section 57 is deemed to be a reference to –

- (a) the Law, this Ordinance, or any subordinate legislation made under the Law or this Ordinance, or
- (b) as the case may require, any relevant provision of the Law, this Ordinance or any subordinate legislation made under the Law or this Ordinance.

(2) Nothing in subsection (1) limits the effect of section 19 of the Interpretation (Guernsey) Law, 1948<sup>dd</sup>.

### **Consequential amendments.**

**59.** The enactments listed in column 1 of Schedule 7, so far as these apply in the Island, are amended as set out in columns 2 and 3 of that schedule.

### **Transitional and savings provisions.**

**60.** The transitional and savings provisions in Schedule 8 have effect.

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<sup>dd</sup> Ordres en Conseil Vol. XIII, p. 355.

**Citation.**

61. This Ordinance may be cited as the Prison (Guernsey) Ordinance, 2013.

**Commencement of the Law and this Ordinance.**

62. The Law and this Ordinance shall both come into force on the 4<sup>th</sup> November, 2013.

## SCHEDULE 1

### THE GOVERNOR

#### Section 3(1)

#### **Appointment and term of office.**

1. (1) The Department must appoint the Governor for a term agreed between the Department and the Governor at the time of the Governor's appointment.

(2) If the Governor ceases to hold office by reason of the expiration of the Governor's term or the Governor's resignation, the Governor is eligible for reappointment.

#### **Terms and conditions of appointment.**

2. Subject to any other provision of the Law –

- (a) the terms and conditions of the Governor's appointment (including suspension or removal from office) are as agreed between the Department and the Governor, and
- (b) the Governor must comply with any direction given to the Governor by the Department under section 4(3) of the Law.

#### **Oath of office.**

3. The Governor must, upon the Governor's appointment or as soon as reasonably practicable thereafter, take an oath or make an affirmation before the

Royal Court in the following terms or in words to the like effect:

"You [swear and promise on the faith and truth that you owe to God] [do solemnly, sincerely and truly declare and affirm] that you will well and faithfully discharge the functions of Governor in accordance with law; that you will exercise the powers entrusted to you only as appears necessary to you for the due discharge of those functions."

**Annual report.**

4. As soon as practicable after the end of each calendar year, the Governor must submit a written report to the Department that includes the information set out in Schedule 2.

**Presumption of authenticity.**

5. Any document purporting to be issued by the Governor and to be signed by or on behalf of the Governor is deemed to be such a document unless the contrary is shown.

## SCHEDULE 2

### INFORMATION IN GOVERNOR'S ANNUAL REPORT

Paragraph 4 of Schedule 1

1. A statement on the conditions of accommodation and facilities at the prison.
2. The daily average and the highest daily number of prisoners.
3. A breakdown of the monthly average number of prisoners in each category.
4. A statement of the work done by prisoners while in custody, including the kind and quantity of things produced and the nature of other work done.
5. A statement of the educational and vocational activities available for prisoners, and whether these are particularly aimed at male prisoners, female prisoners, or prisoners under 21 years of age or 18 years of age.
6. A statement of the kind and quantity of punishments awarded to prisoners found guilty of a disciplinary offence in accordance with any regulations.
7. Statistical and other information regarding –
  - (a) the determination of appeals by prisoners against a finding of guilt, or a punishment awarded, for a disciplinary offence,
  - (b) the use of force against prisoners,

- (c) temporary confinement or cellular confinement of prisoners,
  - (d) violence between prisoners,
  - (e) injuries suffered by prisoners,
  - (f) deaths and attempted escapes, and
  - (g) incidents of self-harm.
8. A copy of the Healthcare Manager's annual report on the health and healthcare of prisoners under section 13.
9. Any other information required by the Department or by Resolution of the States to be included in the report.

## SCHEDULE 3

### THE INDEPENDENT MONITORING PANEL

Section 17(3)

#### **Constitution of the Panel.**

1. (1) The Panel is to consist of not less than four and not more than eight members, with the exact number being determined by the Department.

(2) Before nominating a person to the States for appointment to the Panel, the Department may require that person to provide, and to authorise the Department to obtain, such information (including previous convictions) and references as the Department may reasonably require to ascertain that person's suitability for membership of the Panel, having regard to subparagraphs (3) and (4).

(3) The Department must have particular regard to the need to ensure that Panel members have a strong commitment to human rights, have a strong sense of integrity, are able to maintain confidentiality, and have effective communication and listening skills.

(4) Each Panel member is to be appointed for a term of four years or such shorter period as the States may determine in each case.

(5) A Panel member may be reappointed.

(6) A person may not be a Panel member if the person –

(a) is now, or has ever been in the 12 preceeding months, a member of the States,



- (b) is a person employed, whether on a full-time or part-time basis, by the States,
- (c) is an authorised person, or is otherwise under the direction and control of the Governor or the Department, or
- (d) is the holder of judicial office in any court in the Island.

**Panel members.**

**2.** (1) The Chairman or any other Panel member may resign from office at any time by giving notice in writing to the Department.

(2) The Department may remove the Chairman or any other Panel member from office by giving notice in writing to the Panel member concerned, if the Department is satisfied that the person concerned –

- (a) has without reasonable cause failed to carry out that person's duties under this Ordinance,
- (b) has been convicted of a criminal offence,
- (c) has become bankrupt,
- (d) is incapacitated by physical or mental illness, or
- (e) is otherwise unable or unfit to perform that person's duties.

(3) The Department must notify the States of the resignation or removal from office of the Chairman or any other Panel member at the first available opportunity.

(4) If the Chairman resigns or is removed from the Chairman's office –

(a) this in itself does not affect that person's continuance in office as a Panel member,

(b) the Panel must, with the consent of the Department, appoint a Panel member to act as Chairman for the remainder of that Panel member's term of office as a Panel member, and

(c) the Department must notify the States of that appointment at the first available opportunity.

(5) The validity of any proceedings of the Panel is unaffected by a vacancy in its members, by any defect in the election or appointment of a member or by any lack of qualification of a person to act as a member.

### **General duties and powers.**

3. (1) For its purpose in section 17(2), the Panel must –

(a) ensure that its members pay frequent unannounced visits to the prison, including at least one unannounced visit each month by two authorised Panel members,

- (b) arrange for the food and drink of the prisoners, and any premises (including cells) within the prison that it considers appropriate, to be inspected on such visits, and
- (c) satisfy itself as to the state of the prison premises, the management and administration of the prison, and the treatment of prisoners.

(2) In addition, the Panel must ensure that an authorised Panel member –

- (a) visits any prisoner who requests the Panel for a visit by a Panel member,
- (b) makes at least one visit to each prisoner held in temporary confinement or cellular confinement,
- (c) inquires into any complaint or request made to it by any prisoner,
- (d) inquires into any report or allegation made to it by any person, other than a prisoner, concerning any matter that –
  - (i) affects or is likely to affect the health, safety or well-being of any prisoner, or
  - (ii) is otherwise relevant to the Panel's purpose in section 17(2),

- (e) informs the Department immediately of any abuse that comes to the Panel's knowledge,
- (f) directs the attention of the Governor to any matter which calls for the Governor's attention, and reports to the Department any matter which the Panel considers appropriate to report, and
- (g) inquires into, and provides findings and recommendations on, any matter at the request of the Department.

(3) The Panel may at any time report to the States on any matter that the Panel considers appropriate, in addition to the annual report required under paragraph 5.

**Power to inspect, interview and review records, etc.**

4. (1) The Governor and all authorised persons must allow any authorised Panel member at any time –

- (a) to enter and inspect any part of the prison,
- (b) with the consent of any prisoner, to interview the prisoner –
  - (i) in the prisoner's cell, or
  - (ii) at the request of that Panel member or the prisoner, in a room out of the sight and hearing

of authorised persons, and

- (c) to review any records of the prison, subject to subparagraph (6).

(2) The Governor and all authorised persons must cooperate fully with an authorised Panel member exercising or performing a function under the Law.

(3) For the avoidance of doubt, an authorised person may discuss with any authorised Panel member any matter that, in the opinion of the authorised person –

- (a) affects or is likely to affect the health, safety or well-being of any prisoner, or
- (b) is otherwise relevant to the Panel's purpose in section 17(2).

(4) After each visit to the prison or a prisoner, an authorised Panel member must –

- (a) write a report setting out the observations of the visiting Panel members on the condition of the prison or any prisoner, including any concerns held by these Panel members, and
- (b) send the report to the Governor and a copy of the report to the Chairman.

(5) If dissatisfied with the Governor's response to the report, the

Panel may report the matter to the Department and request a written response from the Department.

(6) Nothing in subparagraph (1)(c) authorises a Panel member to review–

(a) records held for the purposes of or relating to conduct authorised in accordance with Part 2 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, or

(b) the personal data of a prisoner, unless either the prisoner concerned or the Governor consents to it.

(7) In subparagraph (6)(b), "**personal data**" –

(a) has the meaning given by section 1(1) of the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>ee</sup>, and

(b) includes anything specified by regulations to be personal data.

### **Annual report.**

5. (1) As soon as practicable after the end of each calendar year, the Panel must submit a written report to the States in respect of that calendar year in accordance with subparagraphs (2) and (3).

(2) The Panel's annual report must include the following information –

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<sup>ee</sup> Ordres en Conseil Vol. XLII(I), p. 51; to which there are amendments not relevant to this Ordinance.

(a) a summary of the Panel's activities, including the number of –

(i) complaints or requests received from prisoners, and

(ii) inquiries conducted by Panel members,

broken down by the topics to which they relate (e.g. food, temporary release licence, privileges, use of force) and compared to statistics from previous years,

(b) anonymous examples of prisoner's complaints and results of the Panel's inquiries into those, including recommendations made and responses received from the Governor or the Department,

(c) in light of its purpose in section 17(2) –

(i) the Panel's observations on the state of the prison premises,

(ii) its observations on the administration of the prison,

(iii) its observations on the treatment of prisoners, and

(iv) any advice or recommendation it sees fit to

make, and

- (d) any other information required by the Department or by Resolution of the States.

(3) The Panel's annual report must be sent to the Department for submission on the Panel's behalf to the States in accordance with section 1(1) of this Ordinance.

**Delegation to members.**

6. (1) The Panel may, in writing, delegate to any of its members named or described in that instrument, either generally or otherwise as provided by that instrument, any of its functions except –

- (a) this power of delegation, or

- (b) its duty to make an annual report to the States.

(2) A function delegated under this paragraph may be carried out by the delegate in accordance with the instrument of delegation and, when so carried out, is deemed to have been carried out by the Panel.

(3) A delegation under this paragraph is revocable by the Panel at will and does not prevent the carrying out of a function by the Panel.

(4) For the avoidance of doubt, a function may be delegated under this paragraph to a committee comprising any number of Panel members.

**Administration and expenses.**

7. (1) The Department must provide the Panel with the



accommodation, equipment, secretarial and clerical services, and other facilities, that the Panel reasonably requires for the proper and effectual discharge of its functions.

(2) The Department must pay out of the general revenue account of the States –

- (a) any reasonable expenses claimed by the Panel and its members, and
- (b) any allowances to Panel members (including attendance allowances) provided for by regulations.

(3) The Department must cause to be kept a record and account of all expenditure incurred by the Department under subparagraph (1) or (2).

(4) The Panel must provide the Department with any information that the Department reasonably requires to enable the Department to discharge its obligations under subparagraph (3).

### **Meetings.**

8. (1) The Panel must meet –

- (a) at least once every two months, or
- (b) less frequently if resolved by the Panel (but no fewer than four times a year).

(2) If the Panel resolves to meet less frequently than once every two months, it must specify the reason in its resolution.

- (3) The person who presides at meetings of the Panel is –
  - (a) the Chairman, if the Chairman is present, or
  - (b) if the Chairman is not present, the person elected to chair the meeting by, and from among, the other Panel members present.
- (4) At a meeting –
  - (a) a quorum is constituted by –
    - (i) three members, if the Panel (including the Chairman) consists of four, five or six members, or
    - (ii) four members, if the Panel (including the Chairman) consists of seven or eight members,
  - (b) decisions are made by a majority vote,
  - (c) each member other than the person presiding has one vote, and
  - (d) the person presiding has no original vote, but in the event of equality in the votes of the other members present, the person presiding must exercise a casting vote.

**Transaction of business without meeting.**

9. The Panel may, if it thinks fit, transact any business by the circulation of papers to all Panel members, and a resolution in writing approved in writing by a majority of the Panel members is as valid and effectual as if passed at a meeting of the Panel by the votes of the members so approving the resolution.

**Minutes.**

10. The Panel shall keep proper minutes of its proceedings, including minutes of –

- (a) any business transacted as permitted by paragraph 9,
- (b) the authorisation of any Panel member to carry out functions of authorised Panel members, and
- (c) any written exchanges with the Governor or the Department.

**Residual power to regulate procedure.**

11. Subject to the provisions of this Schedule the Panel may regulate its own procedure.

**Interpretation.**

12. In this Schedule, "**authorised Panel member**", in relation to any function –

- (a) means a Panel member authorised by the Panel to carry out the relevant function, and
- (b) includes any Panel member purporting to act with the authorisation of the Panel.

## SCHEDULE 4

### DISCIPLINARY OFFENCES

Section 43(1)

**Disciplinary offences.**

1. Each of the following constitutes a disciplinary offence committed by a prisoner –

- (a) committing any racially aggravated assault,
- (b) detaining any person against the person's will,
- (c) denying access to any part of the prison to any authorised person or visitor,
- (d) fighting with any person,
- (e) intentionally endangering the health or personal safety of any other person, or by the prisoner's conduct, being reckless as to whether such health or personal safety is endangered,
- (f) intentionally obstructing any authorised person in the execution of the person's duty or the performance of the person's work,
- (g) escaping or absconding from prison or from the legal custody of the Governor,

- (h) failing to comply with any condition of a temporary release licence upon which the prisoner is or was temporarily released,
- (i) being found with any substance in the prisoner's urine or breath, or other bodily matter or substance taken as a sample from the prisoner, which demonstrates that –
  - (i) a controlled drug has been administered to the prisoner by that prisoner or by another person, whether in the prison or outside whilst that prisoner is on a temporary release licence,
  - (ii) a medicinal product has been administered to the prisoner by that prisoner or by another person, in the prison, or
  - (iii) the prisoner has smoked a tobacco product or any other thing at any time whilst in the prison,
- (j) being intoxicated as a consequence of consuming any intoxicating liquor,
- (k) consuming any intoxicating liquor, whether or not provided to the prisoner by another person,
- (l) having in the prisoner's possession –
  - (a) any thing which the prisoner is not lawfully required or authorised to possess, or

- (b) a quantity of any thing that is greater than the quantity which that prisoner is lawfully required or authorised to possess,
- (m) supplying to any person any prohibited thing,
- (n) supplying to any prisoner any thing which the prisoner is not lawfully required or authorised to have for that prisoner's own use,
- (o) improperly taking anything belonging to another person, the prison or the Department,
- (p) intentionally or recklessly setting fire to any part of the prison or any other property, whether or not the prisoner's own,
- (q) destroying or damaging any part of the prison or any property (other than the prisoner's own),
- (r) causing racially aggravated damage to, or destruction of, any part of the prison or any other property, other than the prisoner's own,
- (s) being absent from any place where the prisoner is required to be, or being present at any place where the prisoner is not lawfully required or authorised to be,
- (t) being disrespectful to any authorised person or any visitor,

- (u) using threatening, abusive or insulting words or behaviour,
- (v) using threatening, abusive or insulting racist words or behaviour,
- (w) intentionally failing to work properly or, being required to work, refusing to do so,
- (x) disobeying any lawful order of an authorised person,
- (y) disobeying or failing to comply with any provision of this Ordinance, the regulations or the Prison Orders that applies to the prisoner,
- (z) receiving any controlled drug, or, without the consent of an authorised officer, any other thing, during the course of a visit,
- (aa) displaying, attaching or drawing on any part of a prison, or on any other property, threatening, abusive or insulting racist words, drawings, symbols or other material,
- (bb) smoking a tobacco product or any other thing, and
- (cc) attempting to commit, or inciting or assisting another prisoner to commit, any of the foregoing disciplinary offences.

**Exceptions to paragraph 1(i)(i) and (ii).**

2. Paragraph 1(i)(i) and (ii) does not apply where the prisoner being charged with the disciplinary offence proves, on the balance of probabilities, that –

- (a) the administration of the controlled drug or (as the case may be) medicinal product to that prisoner had been lawfully required or authorised,
- (b) the controlled drug or (as the case may be) medicinal product was administered by or to that prisoner in circumstances in which that prisoner did not know and had no reason to suspect that such a drug or medicinal product was being administered, or
- (c) the controlled drug or (as the case may be) medicinal product was administered by or to that prisoner under duress, or without that prisoner's consent in circumstances where it was not reasonable for that prisoner to have resisted.

**Interpretation.**

**3.** In this Schedule –

**"administer"**, in relation to a controlled drug, includes to consume, take, inject, inhale (or inhale the fumes or vapour from), ingest or use, the controlled drug in any way,

**"presumed"** means presumed by the prisoner committing, or alleged to have committed, the disciplinary offence,

**"racial group"** means a group of persons that may be defined by reference to race, colour, nationality (including citizenship) or ethnic, national or territorial origins,



"**racist**", in relation to words, behaviour or material, means words, behaviour or material that demonstrate, or are wholly or partly motivated by, hostility to members of a racial group (whether identifiable or not) based on their actual or presumed membership of a racial group; and cognate terms are to be construed accordingly, and

"**smoke**" means to orally smoke, hold or otherwise have control over any ignited tobacco product or any other ignited thing, with a view to tasting or inhaling the smoke.

## SCHEDULE 5

### PROCEDURES ON DEATH, OR SERIOUS INJURY FROM ATTEMPTED SUICIDE

Section 44

**Notice of death or serious injury.**

1. The Governor must ensure that immediate notice of the incident is given to –

- (a) the nearest known relative of the prisoner concerned,
- (b) any other persons previously nominated by that prisoner as persons to be notified in the event of an emergency,
- (c) Her Majesty's Procureur,
- (d) the Chief Officer of the salaried police force of the Island,
- (e) the Panel,
- (f) the Department, and
- (g) any prescribed person.

**Inquest or independent investigation must be held.**

2. (1) As soon as practicable after the incident, the Department, in consultation with Her Majesty's Procureur, must initiate or commission an independent investigation into the causes and circumstances of that incident, regardless whether death occurs or whether there is a police investigation into that

incident.

(2) An investigation under subparagraph (1) must be carried out–

- (a) in an effective manner,
- (b) reasonably expeditiously, and
- (c) in a manner that does not interfere with or otherwise compromise any criminal investigation relating to the circumstances of the incident.

(3) On completion of an investigation under subparagraph (1), the person conducting the investigation must –

- (a) make a written report which includes that person's conclusions on the following matters –
  - (i) whether any act or omission on the part of any authorised person, or any other person, was relevant to the incident,
  - (ii) whether there was a failure to comply with any provision of the Law or any relevant procedures,
  - (iii) whether there was, or could reasonably be thought to be, any defect in any procedures in place,

(iv) whether applicable procedures following the incident were carried out at the proper time, and

(v) what, if any, measures should be taken by the Governor to prevent or minimise the likelihood of a similar incident occurring in future, and

(b) give the report to the Department and the Governor, and a copy of that report to each person specified in paragraph 1(a) to (e) and any prescribed person.

(4) If the incident involves the death of the prisoner, the duty in subparagraph (1) is deemed to be discharged if an inquest is opened into the incident pursuant to any enactment.

**Full cooperation required.**

3. The Department, the Panel and all authorised persons must provide any information requested by, and otherwise cooperate fully with, any person conducting an investigation under paragraph 2.

**Governor to implement or report on recommendations.**

4. Within one month of the Governor being given the report under paragraph 2(3), the Governor must, in relation to each measure recommended in that report to prevent or minimise the likelihood of a similar incident occurring in the future, provide a written report to the Department setting out –

(a) how the measure has been carried out,

(b) why the measure should not or could not be carried out, or

- (c) a reasonable timetable to carry out that measure.

**Contents not to be used in civil proceedings without leave.**

5. (1) The contents of a report made under paragraph 2(3) may not be used in civil proceedings of any kind except with the leave of the court or tribunal hearing those proceedings.

(2) The court or tribunal hearing those proceedings may grant a person leave to use the contents of that report if, and only if, that court or tribunal determines that–

- (a) the person is or may be entitled to claim relief of some kind in the proceedings,
- (b) it is impossible or impracticable for the person to formulate that person's claim without reference to the contents of that report, and
- (c) the interests of justice in the disclosure of those contents outweigh the adverse impact the disclosure might have on any future investigations into prisoners' deaths while in custody.

**Interpretation.**

6. In this Schedule –

"civil proceedings" excludes –

- (a) proceedings for a disciplinary offence committed or

suspected to be committed by a prisoner,

- (b) proceedings for disciplinary or any other action that may be taken against an authorised person who is found guilty of misconduct or gross misconduct, and
- (c) proceedings for any form of disciplinary action against any other person,

**"incident"** means the death, incapacitation or other serious injury of the prisoner concerned, and

**"nearest known relative"**, in relation to a prisoner, means –

- (a) if the prisoner is married and the prisoner's spouse is known to the Governor, that spouse, or
- (b) in any other case, the nearest relative of the prisoner whose address is known to the Governor.

## SCHEDULE 6

### ENACTMENTS REPEALED OR REVOKED

#### Section 57

The Order in Council entitled "Nouvelle Prison Publique" registered on the 11<sup>th</sup> of June 1803<sup>ff</sup>.

The Law entitled "Loi portant Règlement pour Mesurer et Photographier des Prisonniers condamnés ou accusés de crime" registered on the 14th of July 1923<sup>gg</sup>.

The Prison Administration (Guernsey) Law, 1949<sup>hh</sup>.

The Prison Administration (Amendment) (Guernsey) Law, 1957<sup>ii</sup>.

The Prison Administration (Amendment) (Guernsey) Law, 1999<sup>jj</sup>.

The Ordinance entitled "Marins au service de Sa Majesté emprisonnés" of the 7<sup>th</sup> of August, 1872<sup>kk</sup>.

The Prison (Regulation of Access) Ordinance, 1990.

The Prison Administration (Guernsey) Ordinance, 1998<sup>ll</sup>.

The Prison Administration (Amendment) Ordinance, 2002<sup>mm</sup>.

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<sup>ff</sup> Ordres en Conseil Vol. I, p. 1.

<sup>gg</sup> Ordres en Conseil Vol. VII, p. 86.

<sup>hh</sup> Ordres en Conseil Vol. XIV, p. 159.

<sup>ii</sup> Ordres en Conseil Vol. XVII, p. 234.

<sup>jj</sup> Ordres en Conseil Vol. XXXIX, p. 13.

<sup>kk</sup> Recueil d'Ordonnances Tome IV, p. 134.

<sup>ll</sup> Recueil d'Ordonnances Tome XXVIII, p. 90, as amended by Tome XXIX, p. 206.

<sup>mm</sup> Recueil d'Ordonnances Tome XXIX, p. 206.

The Prison Administration (Guernsey) (Amendment) Ordinance, 2006<sup>nn</sup>.

The Prison Administration (Alcohol and Drug Testing) Ordinance, 1999<sup>oo</sup>.

The Prison Administration (Alcohol and Drug Testing) (Amendment) Ordinance, 2009<sup>pp</sup>.

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<sup>nn</sup> Recueil d'Ordonnances Tome XXXI, p. 656.

<sup>oo</sup> Recueil d'Ordonnances Tome XXVIII, p. 223, as amended by Recueil d'Ordonnances Tome XXXIII, p. 611.

<sup>pp</sup> Recueil d'Ordonnances Tome XXXIII, p. 611.



## SCHEDULE 7

### CONSEQUENTIAL AMENDMENTS

## Section 59

<b>Enactment</b>	<b>Provision</b>	<b>Amendment</b>
Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004	Section 4(2)	For the expression "section 22 of the Prison Administration (Guernsey) Ordinance, 1998", substitute the expression "section 29 of the Prison (Guernsey) Ordinance, 2013".
Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003	Section 4(4)	For the expression "any Ordinance under section 3 of the Prison Administration (Guernsey) Law, 1949", substitute the expression "the Prison (Enabling Provisions) (Guernsey) Law, 2010 and any Ordinance or subordinate legislation made under it".
Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 <sup>qq</sup>	Section 5(8)	For the expression "section 22 of the Prison Administration (Guernsey) Ordinance, 1998", substitute the expression "section 29 of the Prison (Guernsey) Ordinance, 2013".
Data Protection	Table in	In the table, for the expression "States Prison

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<sup>qq</sup> Ordres en Conseil Vol. XLI, p. 240; as amended by Vol. XL, p. 15; Order in Council No. IX of 2008; Ordinance No. XXXVIII of 2010. See also Ordres en Conseil Vol. XXII, p. 122; Vol. XXIX, p. 207; Order in Council No. III of 2005.

Enactment	Provision	Amendment
(Bailiwick of Guernsey) Law, 2001	section 56(5)	Board", substitute the expression "Home Department".
		In the table, for the expression "Prison Administration (Guernsey) Law, 1949" substitute the expression "Prison (Enabling Provisions) (Guernsey) Law, 2010 and any Ordinance or subordinate legislation made under it".
	Section 56(6)	Repeal the definition of "States Prison Board".
Parole Review Committee (Guernsey) Ordinance, 1991	Section 1(5)	<p>For paragraph (g), substitute the following paragraph –</p> <p style="padding-left: 40px;">"(g) specify the date on which a licence expires, being the date on which a prisoner would have been released on remission under section 29 of the Prison (Guernsey) Ordinance, 2013 or such later date as he would have been released on or after any forfeiture of remission under any regulations made under that Ordinance, and".</p>
Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990	Section 1	<p>For subsection (6), substitute the following subsection–</p> <p style="padding-left: 40px;">"(6) A person serving a sentence of youth detention at the prison</p>

Enactment	Provision	Amendment
		shall be deemed a prisoner for the purposes of the Prison (Enabling Provisions) (Guernsey) Law, 2010 and any Ordinance or subordinate legislation made under it."
	Section 4(9)	For the definition of "remission", substitute the following definition –  "remission" means remission under section 29 of the Prison (Guernsey) Ordinance, 2013".
Criminal Justice (Day Training Centre) (Guernsey) Law, 1989 <sup>rr</sup>	Section 6(1)	For the definition of " <b>the Governor of the States Prison</b> ", substitute the following definition –  " <b>the Governor of the States Prison</b> " means the Governor within the meaning of section 55(1) of the Prison (Guernsey) Ordinance, 2013,".
Uniform Scale of Fines (Guernsey) Law, 1989 <sup>ss</sup>	Part I of the Schedule	Delete the entry relating to the Prison Administration (Guernsey) Ordinance, 1959.

<sup>rr</sup> Ordres en Conseil Vol. XXXI, p. 210; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

<sup>ss</sup> Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

## SCHEDULE 8

### TRANSITIONAL AND SAVINGS PROVISIONS

Section 60

**Existing prison deemed to be declared a prison.**

1. (1) The premises outlined in red on the Prison Plan, comprising land and buildings known as the States Prison and situated at Baubigny in the Parish of St. Sampson, excluding the road giving access to those premises, are deemed to have been declared to be a prison under section 1 of the Law.

(2) The deemed declaration under subparagraph (1) –

(a) takes effect from the commencement date, and

(b) may be revoked or amended by the Department in accordance with section 1(2)(c) of the Law.

**Existing green and yellow areas to continue.**

2. (1) The area coloured in green in the Prison Plan is deemed to be a green area.

(2) The area coloured in yellow in the Prison Plan is deemed to be a yellow area.

(3) Subparagraphs (1) and (2) may respectively be repealed at any time by regulations made under this Ordinance.

**Governor to continue in office.**

3. The person appointed as the Governor of the Prison under the Prison Administration (Guernsey) Law, 1949, and holding office as such immediately before the commencement date –

- (a) is deemed to have been appointed Governor under section 3 of this Ordinance, and
- (b) continues to hold the office of Governor in accordance with the terms and conditions of that person's appointment, subject to the provisions of this Ordinance.

**Medical officer to continue in office.**

4. A person appointed as medical officer of the prison under the Prison Administration (Guernsey) Ordinance, 1998, and holding office as such immediately before the commencement date –

- (a) is deemed to have been appointed as a medical officer and member of the healthcare team under section 8(1) of this Ordinance, and
- (b) continues to hold office as such in accordance with the terms and conditions of that person's appointment, subject to the provisions of this Ordinance.

**Chaplain to continue in office.**

5. The person appointed as Chaplain of the Prison under the Prison Administration (Guernsey) Law, 1998, and holding office as such immediately before the commencement date –

- (a) is deemed to have been appointed coordinating chaplain under section 25 of this Ordinance, and
- (b) continues to hold office as such in accordance with the terms and conditions of that person's appointment, subject to the provisions of this Ordinance.

**Offences against discipline to be dealt with under former provisions.**

6. An offence against discipline committed by a prisoner under the Prison Administration (Guernsey) Ordinance, 1998 before the commencement date must be dealt with under that Ordinance and all other relevant legislation, as if this Ordinance had not come into force.

**Existing Code of Discipline to continue in force.**

7. The Prison Administration (Code of Discipline for Prison Officers) Order, 2006<sup>tt</sup> -

- (a) is deemed to set out standards of conduct and guidance issued by the Department in accordance with section 6,
- (b) has effect accordingly subject to the provisions of the regulations, this Ordinance and the Law, and
- (c) may be amended or revoked in accordance with section 6(1).

**Existing Orders to continue in force.**

8. (1) The Orders listed in the table in subparagraph (3), including

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<sup>tt</sup> G.S.I. No. 31 of 2006.

the amendments noted –

- (a) are deemed to be Prison Orders issued in accordance with section 50,
- (b) have effect subject to the provisions of this Ordinance and the Law, and
- (c) may be amended or revoked in accordance with section 50.

(2) The Orders indicated to be "Restricted" in the table in subparagraph (3) are deemed to be certified "Restricted" under section 50(3).

(3) Subparagraphs (1) and (2) refer to the following table –

<b>P.O. no</b>	<b>Title or Description</b>	<b>Initial Issue Date</b>	<b>Amendments</b>	<b>Restricted</b>
P.O. 1	Adjudications	13-Nov-06	01-Jan-09	-
P.O. 2	Prisoners Financial Affairs	Feb-07	Sept-12	-
P.O. 4	Sentence Calculations	08-Aug-07	04-Feb-09	-
P.O. 5	Health & Safety	13-Nov-06	no date	-
P.O. 6	I.E.P. Scheme	13-Nov-06	12-Aug-11	-
P.O. 6A	Electronic Game	18-Jun-07	27-Jan-09	-
P.O. 7	Categorisation	Mar-07	Jan-13	-
P.O. 8	Prisoners Pay Policy	Feb-12	01-Sep-12	-

<b>P.O. no</b>	<b>Title or Description</b>	<b>Initial Issue Date</b>	<b>Amendments</b>	<b>Restricted</b>
P.O. 10	Mandatory Drug Testing	Jul-07	2010	-
P.O. 12	ROTL Work Release	14-May-07	01-June-13	-
P.O. 14	Staff Alcohol & Drugs Policy	23-Jul-07	23-Jul-08	Restricted
P.O. 15	Reporting Wrongdoings	-	2011	Restricted
P.O. 16	Complaints made by the public	07-Jun-07	07-Jun-08	-
P.O. 20	C.N.A.	23-May-02	-	-
P.O. 22	Prisoner Risk Management Team Meeting	06-Aug-07	01-Jun-11	-
P.O. 23	Prisoner Correspondence	19-Jul-07	Keep in touch booklet	-
P.O. 24	Prisoner Visits	19-Nov-07	Keep in touch booklet	-
P.O. 24B	Closed Visits	01-Sep-09	01-Sep-10	-
P.O. 25	Other Employment/ Part Time Work	17-Dec-07	17-Dec-08	-
P.O. 27	SCAPU	15-Feb-08	2010	-
P.O. 28	ACCT	Dec-07	Feb-11	-
P.O. 29	Safer Cell Policy	01-Jan-12	-	-
P.O. 31	Reception/Induction/ First Night	Jul-2011	2011	-
P.O. 33	Flexible working	26-Mar-08	26-Mar-09	Restricted



<b>P.O. no</b>	<b>Title or Description</b>	<b>Initial Issue Date</b>	<b>Amendments</b>	<b>Restricted</b>
P.O. 34	Staff Fitness	07-Feb-07	Jan-13	Restricted
P.O. 35	Telephone Communications (PIN Phone)	Apr-08	2011	-
P.O. 36	Follow up Death in Custody	Feb-11	2011	-
P.O. 37	Mother & Baby Policy	Apr-11	-	-
P.O. 38	Post Incident Care	Jul-08	2011	-
P.O. 39	Activity Allocation Board	Nov-12	-	-
P.O. 41	Marriages	Jun-08	2011	-
P.O. 42	E Cigarettes Policy	Apr-12	Jan-13	-
P.O. 45	Use of Prison & Private Vehicles	12-May-10	-	Restricted
P.O. 46	Dress Code Policy	01-Jul-10	Jan-13	Restricted
P.O. 47	Inappropriate Materials Guidance	01-Aug-10	2011	-
P.O. 48	Data Protection Policy	12-Aug-11	Combined with former P.O. 18	-
P.O. 49	Violence Reduction Policy	01-Feb-11	2011	-
P.O. 50	Long Service & Good Conduct Medal regulations	01-Oct-09	2011	Restricted
P.O. 51	Performance & Recognition	01-Aug-11	2011	-

<b>P.O. no</b>	<b>Title or Description</b>	<b>Initial Issue Date</b>	<b>Amendments</b>	<b>Restricted</b>
P.O. 57	Contamination Injuries (Sharps)	01-Aug-10	Jan-13	-
P.O. 58	Audit Policy	21-Jul-10	Combined with former P.O. 26	Restricted
P.O. 60	Managing Attendance for staff	Jun-10	02-Aug-12	Restricted
P.O. 60B	Managing attendance – Guidance for managers	Jun-10	2011	Restricted
P.O. 61	Prisoner Complaints Procedure	Nov-10	Jun-13	-
P.O. 67	Transfers	Nov-09	Nov-09	-
P.O. 68	Food Refusal Policy	Nov-09	-	-
P.O. 70	Diversity Policy	Dec-11	Apr-12	-
P.O. 71	Staff Rotation Policy	Jan-13	-	Restricted
P.O. 81	Grievances	23-Feb-07	01-Nov-07	Restricted
P.O. 84	Staff Capability Procedure	01-Aug-12	Aug-12	Restricted
P.O. 85	Investigations	13-Nov-06	-	Restricted
P.O. 86	Conduct & Discipline	13-Nov-06	Jan-07	-
P.O. 87	Detail Policies, Procedures & Guidelines	Mar-09	Jan-13	Restricted
P.O. 88	Avon Catalogue (ordering & issuing of products)	Oct-09	-	-

## **The Electronic Census (Guernsey) Ordinance, 2013**

### Arrangement of sections

#### **PART I PRELIMINARY**

1. Appointment of supervisor.
2. Functions of supervisor.
3. Appointment of census officers.
4. Delegation of functions and powers.
5. Declaration of secrecy.
6. Revocation of appointments.
7. Power to give directions.

#### **PART II ELECTRONIC CENSUS**

8. Taking of electronic census.
9. Disclosure of information for purposes of electronic census.
10. Disclosure to be reasonably necessary for purpose of section 8.
11. Duty of confidentiality not contravened by disclosure to supervisor or census officer.
12. Custody of relevant data and documents.

#### **PART III MISCELLANEOUS**

13. Offences and penalties.
14. Defence of due diligence.
15. Interpretation.
16. Amendment of Income Tax (Guernsey) Law, 1975.
17. Amendment of Social Insurance (Guernsey) Law, 1978.
18. Amendment of Attendance and Invalid Care Allowances (Guernsey) Law, 1984.
19. Citation.
20. Commencement.

Schedule – Terms of oath/affirmation

## **The Electronic Census (Guernsey) Ordinance, 2013**

**THE STATES**, in pursuance of their Resolutions of the 28<sup>th</sup> July, 2010<sup>a</sup> and 26<sup>th</sup> March, 2013<sup>b</sup> and in exercise of the powers conferred on them by section 208C(1) of the Income Tax (Guernsey) Law, 1975<sup>c</sup>, section 112B of the Social Insurance (Guernsey) Law, 1978<sup>d</sup>, section 14 of the Disclosure (Bailiwick of Guernsey) Law, 2007<sup>e</sup> and all other powers enabling them in that behalf, hereby order:-

### PART I PRELIMINARY

#### **Appointment of supervisor.**

1. The Policy Council may appoint a person, to be called the electronic census supervisor ("**the supervisor**").

#### **Functions of supervisor.**

2. (1) The functions of the supervisor are -

(a) to make such arrangements and to do all such things as are necessary for the taking of an electronic census,

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<sup>a</sup> Article IX of Billet d'État No. XVII of 2010.

<sup>b</sup> Article III of Billet d'État No. V of 2013.

<sup>c</sup> Ordres en Conseil Vol. XXV, p. 124. Section 208C was inserted by Order in Council No. V of 2011.

<sup>d</sup> Ordres en Conseil Vol. XXVI, p. 292. Section 112B was inserted by Order in Council No. V of 2012.

<sup>e</sup> Order in Council No. XVI of 2007; Recueil d'Ordonnances Tome XXXIII, p. 161; Ordinance Nos. XIV, XIX and XXXVII of 2010.

- (b) to collect, compile, analyse, abstract and publish statistical information relating to the commercial, industrial, financial, social, economic and general activities and condition of the populations of Guernsey and Alderney, and
- (c) to carry out such other related functions as the Policy Council may from time to time determine.

(2) Without prejudice to the generality of subsection (1), the supervisor may -

- (a) design and use such electronic and other processes,
- (b) make such directions, and
- (c) issue such instructions,

as the supervisor thinks fit for the purposes of discharging his functions under this Ordinance.

### **Appointment of census officers.**

3. (1) The supervisor may, with the consent of the Policy Council, appoint such number of census officers as may appear to the supervisor to be necessary to assist in the discharge of the functions of the supervisor under this Ordinance.

(2) The duties of a person appointed under subsection (1) shall be such as the supervisor may from time to time determine.

**Delegation of functions and powers.**

4. (1) The supervisor may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions and powers to be exercised in his name by any census officer named or described in the instrument, other than this power of delegation.

(2) A function or power exercised by a delegate pursuant to an arrangement made under this section is for all purposes exercised by the supervisor; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the supervisor.

(3) An arrangement made under this section for the exercise of a function or power by a delegate -

- (a) may be varied or terminated at any time by the supervisor, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the exercise of the function or power by the supervisor while the arrangement subsists.

**Declaration of secrecy.**

5. Upon appointment under this Ordinance, or as soon as reasonably practicable thereafter -

- (a) the supervisor, and
- (b) a census officer,

shall make and sign a declaration of secrecy in the terms set out in the Schedule.

**Revocation of appointments.**

6. (1) The Policy Council may revoke an appointment made under section 1.

(2) The Policy Council, or the supervisor, may revoke an appointment made under section 3.

**Power to give directions.**

7. (1) The Policy Council may give to the supervisor such directions as it thinks fit with respect to the discharge of his functions under this Ordinance and such directions may be given generally or in respect of any particular case.

(2) The supervisor shall, in the discharge of his functions under this Ordinance, comply with any direction given under subsection (1).

PART II  
ELECTRONIC CENSUS

**Taking of electronic census.**

8. An electronic census using information disclosed under this Ordinance may be taken at any time by the supervisor.

**Disclosure of information for purposes of electronic census.**

9. Where disclosure for the purpose of section 8 is permitted under this Ordinance, or any other enactment, a department if so directed by the supervisor shall disclose to -

- (a) the supervisor, or
- (b) a census officer,

in such manner as the supervisor may direct, such information held by the department in question as is specified in writing by the supervisor.

(2) Subject to subsection (3), information disclosed under subsection (1) must not consist of personal data.

(3) Information disclosed under subsection (1) which consists of personal data -

- (a) must not be further disclosed by the supervisor or a census officer, except -
  - (i) in the case of the supervisor, to a census officer,
  - (ii) in the case of a census officer, to the supervisor or another census officer, or
  - (iii) in the case of the supervisor or a census officer, to the department which provided the information,



- (b) must be retained securely by the supervisor and every census officer in a manner that is consistent with the data protection principles, and
- (c) must be destroyed by the supervisor once the information, in a form intended to protect the identity of a data subject, has been incorporated in an electronic census or is not required.

(4) Subject to any direction made by the supervisor under this Ordinance a department, when disclosing any information for the purposes of an electronic census, shall do so in a manner reasonably intended to prevent any unauthorised person having access thereto.

**Disclosure to be reasonably necessary for purpose of section 8.**

10. Only information that is reasonably necessary for the purpose of section 8 shall be disclosed further to a direction made by the supervisor under this Ordinance.

**Duty of confidentiality not contravened by disclosure to supervisor or census officer.**

11. (1) Subject to subsection (2), no obligation as to confidentiality or other restriction upon the disclosure of information imposed by contract or any rule of law is contravened by the making of a disclosure of information to the supervisor, or a census officer, in accordance with a direction made by the supervisor under this Ordinance.

(2) Subsection (1) does not apply to an obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute.

**Custody of relevant data.**

12. A person having the custody of relevant data obtained further to an electronic census shall keep the data in a manner reasonably intended to prevent any unauthorised person having access thereto.

PART III  
MISCELLANEOUS

**Offences and penalties.**

13. (1) If a person -

- (a) without reasonable excuse, fails to comply with, or acts in contravention of, this Ordinance, or
- (b) wilfully omits to perform his duties under this Ordinance,

he shall be guilty of an offence and liable on conviction to a fine not exceeding level 4 on the uniform scale.

(2) If any person -

- (a) being the census supervisor or a census officer, without lawful authority publishes or communicates to any person otherwise than in the ordinary performance

of his duties under this Ordinance any information acquired by him in the performance of his duties, or

- (b) having possession of any information which to his knowledge has been disclosed in contravention of this Ordinance, publishes or communicates that information to any other person,

he shall be guilty of an offence and liable on conviction to a fine not exceeding level 5 on the uniform scale.

**Defence of due diligence.**

**14.** (1) In any proceedings for an offence under this Ordinance it shall, subject to subsection (2), be a defence for the person charged to prove that he took reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person shall not, without the leave of the court, be entitled to rely on that defence unless -

- (a) at least 7 clear days before the hearing, and
- (b) where he has previously appeared before the court in connection with the alleged offence, within one month of his first appearance,

he has served on Her Majesty's Procureur a notice in writing giving such information identifying or assisting in the identification of the other person as was

then in his possession.

**Interpretation.**

**15.** In this Ordinance, unless the context requires otherwise -

"**census officer**" means a person appointed as a census officer under section 3(1),

"**data protection principles**" means the principles set out in Part I of Schedule 1 to the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>f</sup>,

"**data subject**" has the meaning given by section 1(1) of the Data Protection (Bailiwick of Guernsey) Law, 2001,

"**department**" means any department, council or committee (however called) of the States of Guernsey,

"**documents**" includes information recorded in any form (including, without limitation, information in an electronic communication and data held on computer files),

"**electronic census**" means a census taken in accordance with this Ordinance,

"**form**" includes an electronic form,

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

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<sup>f</sup> Ordres en Conseil Vol. XLII(1), p. 51; Ordinance No. II of 2010 and No. XXXIV of 2011.

"**person**" includes a department,

"**personal data**" has the meaning given by section 1(1) of the Data Protection (Bailiwick of Guernsey) Law, 2001,

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

"**relevant data**" include documents and any information contained in a return,

"**return**" includes any form which the census supervisor may have directed or instructed to be used for the purpose of making a return under this Ordinance,

"**the supervisor**" means the person appointed as census supervisor under section 1, and

"**unauthorised person**" means a person who is not authorised by the supervisor or a department, or under any enactment or otherwise, to receive information or relevant data under this Ordinance.

**Amendment of Income Tax (Guernsey) Law, 1975.**

16. Immediately after section 206A of the Income Tax (Guernsey) Law, 1975 insert the following section -

**"Disclosure of information to supervisor etc. under Electronic Census (Guernsey) Ordinance, 2013.**

**206AA.** (1) Nothing in section 206, or in any oath taken in accordance with that section, precludes the Director of Income Tax from disclosing to -

(a) the electronic census supervisor, or

(b) any census officer,

appointed under the Electronic Census (Guernsey) Ordinance, 2013, for the purposes of enabling them to discharge their functions under that Ordinance, information relating to the income of any person.

(2) Information disclosed to the electronic census supervisor or any census officer under subsection (1) may, without prejudice to the provisions of the Electronic Census (Guernsey) Ordinance, 2013 restricting or authorising the disclosure and use of information, be used by them for the purposes mentioned in subsection (1).".

**Amendment of Social Insurance (Guernsey) Law, 1978.**

**17.** Immediately after section 111(3) of the Social Insurance (Guernsey) Law, 1978 insert the following subsections -

"(4) Nothing in this section shall be taken to prohibit the Administrator or any person authorised by him in that behalf from disclosing to -

(a) the electronic census supervisor, or

(b) any census officer,

appointed under the Electronic Census (Guernsey) Ordinance, 2013, for the purposes of enabling them to discharge their functions under that Ordinance, information relating to the income of any person.

(5) Information disclosed to the electronic census supervisor or any census officer under subsection (4) may, without prejudice to the provisions of the Electronic Census (Guernsey) Ordinance, 2013 restricting or authorising the disclosure and use of information, be used by them for the purposes mentioned in subsection (4).".

**Amendment of Attendance and Invalid Care Allowances (Guernsey) Law, 1984.**

18. Immediately after section 20(2) of the Attendance and Invalid Care Allowances (Guernsey) Law, 1984<sup>g</sup> insert the following subsections -

"(3) Nothing in this section shall be taken to prohibit the Administrator or any person authorised by him in that behalf from disclosing to -

- (a) the electronic census supervisor, or
- (b) any census officer,

appointed under the Electronic Census (Guernsey) Ordinance, 2013, for the purposes of enabling them to discharge their functions under that Ordinance, information relating to the income of any person.

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<sup>g</sup> Orders en Conseil Vol. XXVIII, p. 353; Vol. XXXI, p. 278; Vol. XXXIII, p. 238; Vol. XXXIV, p. 458 and Vol. XLIII (1), p. 261; Recueil d'Ordonnances Tome XXVI, p. 177; Tome XXIX, p. 406 and Tome XXXIII, p. 472 and G.S.I. No. 43 of 2003.

(4) Information disclosed to the electronic census supervisor or any census officer under subsection (3) may, without prejudice to the provisions of the Electronic Census (Guernsey) Ordinance, 2013 restricting or authorising the disclosure and use of information, be used by them for the purposes mentioned in subsection (3).".

**Citation.**

19. This Ordinance may be cited as the Electronic Census (Guernsey) Ordinance, 2013.

**Commencement.**

20. This Ordinance shall come into force on the 30<sup>th</sup> October, 2013.



## SCHEDULE

## Section 5

FORM OF DECLARATION OR SECRECY TO BE MADE BY SUPERVISOR  
AND CENSUS OFFICERS

## Declaration of Secrecy

I, [*name of supervisor or census officer*], solemnly declare that I will fully and honestly fulfil my duties as [*supervisor / a census officer*] in conformity with the requirements of the Electronic Census (Guernsey) Ordinance, 2013 and that I will not, except in the performance of my duties under that Ordinance, disclose or make known during my service as [*supervisor / a census officer*] or at any time thereafter, any matter which comes to my knowledge relating to any person, family, household or undertaking by reason of my service as [*supervisor / a census officer*].

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## **The Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2013**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> November, 2012<sup>a</sup>, and in exercise of the powers conferred on them by sections 533 and 538 of the Companies (Guernsey) Law, 2008<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of Law.**

1. The Companies (Guernsey) Law, 2008, as amended, is further amended as follows.

2. In section 235, subsections (2) and (3) are repealed.

3. In section 236(1) after "secretary of the company," insert "or by a corporate services provider acting under the authority of a director or secretary of the company and in accordance with the terms and conditions of that authority,".

4. In section 236(3) after "reasonable excuse makes" insert "or authorises the making of".

5. For section 256(2) substitute the following subsection -

"(2) A resolution under subsection (1) must be passed -

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<sup>a</sup> Article VII of Billet d'État No. XXIII of 2012.

<sup>b</sup> Order in Council No. VIII of 2008; amended by Ordinance No. XXV of 2008; Ordinance No. LIV of 2008; Ordinance No. VII of 2009; Ordinance No. XIV of 2009; G.S.I. No. 34 of 2009; Ordinance No. XI of 2010; and Order in Council No. XIII of 2010.

- (a) if it relates to only one financial year, in the financial year before the financial year to which it relates,
- (b) if it relates to more than one financial year, in the financial year before the first financial year to which it relates (and for the purposes of this section the resolution may relate to any number, or an indefinite number, of financial years), or
- (c) if the financial year or one of the financial years to which it relates is the company's first financial year, in that financial year."

6. In section 256(4) for "3 months" substitute "11 months".

7. After section 256(4) insert the following subsections -

"(4A) Without prejudice to the operation of subsection (3), a company may rescind a resolution under subsection (1) by ordinary resolution of the members of the company.

(4B) The rescission under subsection (4A) of the resolution under subsection (1) shall only have effect in a particular financial year if the ordinary resolution is passed by the members of the company not later than 11 months after the beginning of that financial year."

**Citation.**

8. This Ordinance may be cited as the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2013.

**Commencement.**

9. This Ordinance shall come into force on the 1<sup>st</sup> November, 2013.

## **The Housing (Control of Occupation) (Extension) Ordinance, 2013**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> June, 2013<sup>a</sup>, and in exercise of the powers conferred on them by section 77 of the Housing (Control of Occupation) (Guernsey) Law, 1994<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Extension of the Housing (Control of Occupation) (Guernsey) Law, 1994.**

1. The Housing (Control of Occupation) (Guernsey) Law, 1994, as amended, shall remain in force until 31<sup>st</sup> December, 2018.

### **Citation.**

2. This Ordinance may be cited as the Housing (Control of Occupation) (Extension) Ordinance, 2013.

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<sup>a</sup> Billet d'État No. XI of 2013.

<sup>b</sup> Ordres en Conseil Vol. XXXV(1), p. 75; Vol. XXXVIII, p. 193 and Vol. XLII(1), p. 34; Order in Council No. VIII of 2007 and No. I of 2009 and Recueil d'Ordonnances Tome XXIX, p. 406 and Tome XXXIII, p. 100.

## **The Copyright and Performers' Rights (Bailiwick of Guernsey) (Amendment) Ordinance, 2013**

**THE STATES**, in pursuance of their resolution of the 1<sup>st</sup> August, 2013<sup>a</sup>, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of Copyright Ordinance.**

1. The Copyright Ordinance shall be amended as follows.
2. Section 88 of the Copyright Ordinance is repealed.
3. Section 93(3)(a) of the Copyright Ordinance is repealed.

### **Amendment of Performers' Rights Ordinance.**

4. The Performers' Rights Ordinance shall be amended as follows.
5. Paragraph 19 of Schedule 1 to the Performers' Rights Ordinance is repealed.
6. Paragraph 24(2)(a) of Schedule 1 to the Performers' Rights Ordinance is repealed.

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<sup>a</sup> Article XIII of Billet d'État No. XV of 2013.

<sup>b</sup> Order in Council No. XIV of 2004; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

**Interpretation.**

7. (1) In this Ordinance -

"**Copyright Ordinance**" means the Copyright (Bailiwick of Guernsey) Ordinance, 2005<sup>c</sup>,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**Performers' Rights Ordinance**" means the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005<sup>d</sup>, and

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

(2) The Interpretation (Guernsey) Law, 1948<sup>e</sup> applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation.**

8. This Ordinance may be cited as the Copyright and Performers' Rights (Bailiwick of Guernsey) (Amendment) Ordinance, 2013.

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<sup>c</sup> Recueil d'Ordonnances Tome XXX, p. 186.

<sup>d</sup> Recueil d'Ordonnances Tome XXX, p. 89.

<sup>e</sup> Ordres en Conseil Vol. XIII, p. 355.

**Extent.**

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

**Commencement.**

10. This Ordinance shall come into force on the 31<sup>st</sup> October, 2013.



## The Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013

**THE STATES LEGISLATION SELECT COMMITTEE**, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup> and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>b</sup> and all other powers enabling the States in that behalf, hereby orders:-

### Application and infringement of EC Regulation

1. (1) Council Regulation (EC) No. 881/2002 of the 27th May, 2002<sup>c</sup>, concerning restrictive measures against the Al-Qaida network ("**the EC Regulation**") is applicable in Guernsey in all respects as if Guernsey, 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 Guernsey is modified as follows -

(a) Article 10 shall not apply,

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>b</sup> Ordres en Conseil Vol. XIII, p.288; there are amendments material to this Ordinance.

<sup>c</sup> OJ L 139, 29.5.2002, p.9.

- (b) references to the competent authorities of, or in, the Member States shall be construed as references to the Policy Council,
- (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 Guernsey where such references concern the enforcement of decisions or public policy,
- (f) references to the Union shall be construed as including Guernsey,
- (g) references to the customs territory of the Union shall be construed as including Guernsey, 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 Guernsey, 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 Guernsey, its airspace and the territorial waters adjacent thereto,
- (i) references to the ports of Member States shall be construed as including any port in Guernsey, 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 Guernsey or from Guernsey,
- (l) references to the law of a Member State shall be construed as including the law of Guernsey, 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 Guernsey, 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) commits 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), 5 or 6, or

(b) paragraph 1(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 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<sup>d</sup> 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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<sup>d</sup> Ordres en Conseil Vol. XXIII, p. 573; Vol. XXXIII, p. 217; and Order in Council No. X of 2004.



**"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 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"** means business which is financial services business for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>e</sup>,

**"Guernsey"** means the Bailiwick of Guernsey apart from the Islands of Alderney and Sark,

**"Guernsey fishing vessel"** and **"Guernsey ship"** have the meanings given by section 294(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002<sup>f</sup>,

**"Judge of the Royal Court"** means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008<sup>g</sup>,

**"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,

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<sup>e</sup> 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; 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; No. 12 of 2010 and No. 14 of 2013.

<sup>f</sup> Order in Council No. VIII of 2004; there are amendments not material to this Ordinance.

<sup>g</sup> Order in Council No. XXII of 2008.

**"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 (Bailiwick of Guernsey) Law, 1989<sup>h</sup>,

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.

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<sup>h</sup> Ordres en Conseil Vol. XXXI, p. 278.

**Repeals.**

11. The Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance, 2011<sup>i</sup>, is repealed.

**Citation.**

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

**Commencement.**

13. This Ordinance shall come into force on the 27<sup>th</sup> August, 2013.

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<sup>i</sup> Ordinance No.VII 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 Guernsey 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 Guernsey,
- (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.