INTERNATIONAL FINANCIAL SANCTIONS—A MORE UNITED APPROACH

Victoria Bell and Matthew Waddington

The United Nations Financial Sanctions (Jersey) Law 2017 represents a watershed in Jersey’s sanctions regime. Not only does it seek to enhance Jersey’s effectiveness at implementing global standards but also furthers harmonisation across the Island’s existing sanctions provisions. This harmonisation is key to a comprehensive and clear legislative package for Jersey where the Island may promote a home-grown and sophisticated sanctions system which demonstrates its continuing commitment to fighting financial crime.

Introduction

1 As part of its commitment to meeting international obligations and standards in relation to financial services, it is essential for Jersey to have a clear, effective and modern sanctions regime. The new United Nations Financial Sanctions (Jersey) Law 2017 (“the UNFS Law”) aims to achieve just that. With the existing European Union sanctions system (where regulations are voluntarily adopted in Jersey under the European Union Legislation Implementation (Jersey) Law 2014 (“the EU Legislation Law”)) and the Terrorist Asset Freezing (Jersey) Law 2011 (“TAFL”) in mind, the principal objective of the UNFS Law may best be described as a desire to dovetail existing sanctions and terrorist-financing legislation in order to create a seamless and efficient regime. The more detailed “aims” of the UNFS Law may be summarised as follows: (i) to address any possible EU delay in implementing asset freezes for non-terrorism United Nations Security Council Resolutions (“UNSCRs”); (ii) to balance the need for effective implementation of UNSCRs with human rights and related concerns; and (iii) to bring about greater consistency in penalties for related offences under different legislation. This article seeks to describe the background, overall aims and structure to the new Law.

Summary

2 The key to the UNFS Law is that a person must be designated, either under UK or EU legislation or under an interim or final asset-freezing order made by the Minister for External Relations under the Law. It is at this point that such a person becomes subject to the standard asset-freezing regime set out under Part 3. Only a final asset-freezing order can achieve a permanent designation (and even then only by being renewed for a year at a time). The other means of designation are all time-limited—partly with a view to human rights compliance. The orders themselves are in fact designed to follow the typical life-cycle of a UNSCR, and to dovetail with the usual sequence of UK and EU implementations.

3 The UNFS Law also amends the EU Legislation Law so that when a UNSCR has already been implemented by the EU and then by Jersey (by order under that Law), if a new person is subsequently added by the UN to its list of designated persons, that new person counts immediately as being designated for the Jersey order—even before the EU manages to amend its implementing regulation to add that person to its list.

4 The EU Legislation Law and the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012⁴ (“the MLWDD Law”) are also both amended with respect to penalties such that there is greater consistency between similar offences as found in the UNFS Law and TAFL.

Background

5 The UNFS Law enables Jersey to implement, at speed, both new asset-freezing regimes required by the United Nations, and listings of newly designated persons under existing regimes. The UNFS Law was brought into force on 1 April 2017 by the United Nations Financial Sanctions (Jersey) Law 2017 (Appointed Day) (Jersey) Order 2017. At the same time, the UN Financial Sanctions (Specified UK Provisions) (Jersey) Order 2017 came into force, followed by the EU Legislation (Sanctions) (Miscellaneous Amendments—United Nations) (Jersey) Order 2017 on 4 May 2017. This section sets out the further background to and history of the development of the UNFS Law.

6 Under Chapter VII of the Charter of the UN, the UN Security Council “shall determine the existence of any threat to the peace, breach of the peace, or act of aggression” and can decide on measures to be taken “to maintain or restore international peace and security”.

⁴ https://www.jerseylaw.je/laws/revised/Pages/08.685.aspx.
Those measures can include use of armed force under art 42, but only if peaceful measures would be inadequate. Under art 41 the UN Security Council can adopt UNSCRs calling on its members to apply “measures not involving the use of armed force”, which can include—

“complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

Increasingly those measures (commonly referred to as “sanctions”) tend to include measures targeted at individuals and bodies, rather than at countries or their governments in general. In particular, these targeted sanctions now often include asset freezes, under which the funds (including financial assets and economic resources) of the targeted person must be frozen, and further funds must not be made available to that person. Sometimes, either instead or in addition, the UNSCR will require other financial sanctions (such as prohibiting financial assistance to persons importing or exporting prohibited goods) to be implemented, either in respect of a country as a whole (or an industry within that country) or in respect of named individuals and businesses. UNSCRs that impose asset-freezes typically require states to impose them “without delay”.

7 Jersey implements travel restrictions through immigration legislation, and import/export restrictions largely through customs legislation. However, asset freezes and other financial sanctions are often of more significance in Jersey, given the importance of its financial services sector. It is of course relatively easy to move quickly to anticipate a slowly implemented asset freeze by electronically transferring funds almost instantly.

8 In the relatively distant past, UNSCRs had been implemented in Jersey by Orders in Council under s 1(2) of the United Nations Act 1946 of the United Kingdom, such as the Iraq (United Nations Sanctions) (Channel Islands) Order 2000. However, this is a cumbersome method, particularly when the UNSCRs are later supplemented or altered. Also, the UK Supreme Court, in HM Treasury v Mohammed Jabar Ahmed (FC), HM Treasury v Mohammed al-Ghabra (FC) and R (Hani El Sayed Sabaei Youssef) v HM Treasury quashed two Orders in Council made under s 1(1) of

6 https://www.jerseylaw.je/laws/revised/Pages/17.910.32.aspx.
the United Nations Act 1946 (in relation to the UK) as *ultra vires* (“the Ahmed judgment”).

9 The UK thus moved to remedy the effects of the Ahmed judgment on asset freezes related to terrorism, starting with the Terrorist Asset-Freezing (Temporary Provisions) Act 2010 which applied to Jersey (see also *In re Terrorist Asset-Freezing (Temp Provs)* Act 2010) and validated the Terrorism (United Nations Measures) (Channel Islands) Order 2001 to deal with the vires problems in the United Nations Act 1946. Jersey then followed suit for a permanent solution with the arrival of TAFL. Asset-freezing powers already existed in the Crime and Security (Jersey) Law 2003 and the MLWDD Law then introduced further powers. Between these three Laws, many UNSCRs were successfully covered but, crucially, not all.

10 Outside of terrorism, until the UNFS Law, most new UNSCR asset freezes were implemented by enacting orders under art 2(1)(b) of the EU Legislation Law 2014. However, the problem remained always that these orders could only be made after the EU had implemented the UNSCR by bringing regulations into force—and this could be several weeks, well after the UNSCR was adopted. The EU has certainly become faster at implementation but it first has to make a decision under its common foreign and security policy, and then adopt a regulation to apply that decision in all its member states, with then both the decision and regulation agreed in all the EU’s languages. This can and does account for inevitable time delays and potentially a greater degree of risk of asset flight. It is interesting to note that the EU Legislation Law replaced another earlier version from 1996 and considerably expanded and updated the various powers. This ensured that Jersey’s orders kept up with the EU much more effectively but that did not solve the lingering problem of the EU not keeping up as swiftly with the UN.

11 In relation to terrorist asset freezes, the advantage of the TAFL structure has been that most of the work is achieved by the Law imposing a “one size fits all” freezing regime as soon as a person is “designated”. Such a structure provides a neat solution for non-terrorist asset freezes and work began on the new Law following that

---

8 2011 JLR 117 https://www.jerseylaw.je/judgments/Pages/Search.aspx?k=Re%20the%20Terrorist%20Asset-freezing%20(Temporary%20Provisions)%20Act%202010%202011%20JLR%20117#.
11 https://www.jerseylaw.je/laws/revised/Pages/08.110.aspx.
model in order to allow new UNSCRs to be as swiftly implemented as possible in Jersey. The UK, in facing similar issues with respect to timely implementation, decided to embark on a similar approach and brought forward the Bill that became the Policing and Crime Act 2017, Part 8 of which dealt with financial sanctions provisions.

12 It is notable that the Bill originally included a permissive extent clause (“PEC”) allowing the financial sanctions provisions to be extended to any of the Crown Dependencies (and British Overseas Territories). However, it is constitutionally appropriate to include a PEC only with the express consent of the Crown Dependencies. This point was raised with Whitehall and the clause (now s 156) was amended during debate so as not to apply to Jersey (it does apply to Guernsey, the Isle of Man and British Overseas Territories). The response by the Government of Jersey is also a further example of the continuing trend away from Orders in Council to specifically tailored, domestically produced primary legislation.

The UNFS Law

13 The UNFS Law itself may be usefully analysed in three highlighted sections to best demonstrate its principal aims and objectives. In brief, these are the implementation of UNSCRs without delay, human rights and related considerations and a new approach to penalties such that further consistency with respect to sanctions and similar offences under other laws is achieved.

The implementation of UNSCRs “without delay”

14 Perhaps the very first point of note with respect to the UNFS Law is that it will enhance Jersey’s ability to comply with the treaty obligations incumbent under the United Nations Charter. As mentioned above, the UNSCRs on sanctions generally contain a requirement to implement the sanctions “without delay”. This phrase has been popularly coined but in essence its practical meaning (per general practice) anticipates a maximum of 48 hours. However, the reality with reference to how fast the EU can react (as explained above) is somewhat different, with sometimes delays of weeks or longer to implement what are mandatory requirements in an age where financial transactions can be instantaneously conducted across borders in seconds. As a responsible international finance centre Jersey has always been alive to the possible risks such “delays” may pose and accordingly the new UNFS Law offers that sought-after solution. The key to the new system is in essence the introduction of an interim financial sanctions regime which temporarily implements UNSCR requirements until the EU has either brought its own measures into force or the UNSCR itself ceases to have effect. This is achieved
through a system of designations depending on interim and final orders made by the Minister, together with automatic designations following UK or EU action.

15 It is important to keep in mind at the start that this system of designations may best be understood by reference to existing provisions of TAFL which the UNFS Law is intended to adapt and complement. TAFL applies an asset freeze immediately to a person (natural or legal) when that person is designated by a terrorism UNSCR, or otherwise to a person designated by the UK or EU or by an interim or final designation made by the Minister. The UNFS Law applies an asset freeze to a person designated by a non-terrorism UNSCR using similar principles adapted as follows to fit the different context.

16 Thus, in terms of persons affected, art 3 of the UNFS Law defines “designated person” as a person who falls within any one of the following—

(a) a temporary UK-designated person, within the meaning of para (2);

(b) a temporary EU-designated person, within the meaning of para (3);

(c) a person who is a designated person by virtue of an interim asset freezing order, under art 4(3); and

(d) a person who is a designated person by virtue of a final asset freezing order, under art 6(6).

17 Before turning to the detail of (c) and (d) further below, it is useful to highlight the effect of paras (a) and (b). In relation to (a), a temporary UK-designated person is a UN-listed person where a UK provision has implemented the UN financial sanctions resolution by virtue of which the person is a UN-listed person, and no more than 30 days have elapsed since the day on which the UN financial sanctions resolution was adopted by the UN Security Council. The UN Financial Sanctions (Specified UK Provisions) (Jersey) Order 2017 specifies ss 152 and 153 of the Policing and Crime Act 2017 as the power under which the UK must have made their implementing regulations to designate the person in the UK to trigger (a). Similarly, in relation to (b), a temporary EU-designated person is UN-listed person where an EU regulation has implemented the UNSCR, and no more than 30 days have elapsed since the adoption of the UNSCR, but also no Jersey order has yet been made under the EU Legislation Law to implement the regulation in Jersey. Thus, a person may be “designated” in four ways, ensuring in the process ultimate compatibility with UN, EU and UK provisions.
With respect to an interim asset freeze under the Law, art 4 provides that the Minister can make an interim asset-freezing order to implement a UNSCR. This is subject to certain carefully defined conditions which the Minister must take into account each time before making such an order. These conditions are found at para (2) and are listed below—

(a) that the resolution appears to be a UN financial sanctions resolution, and accordingly that it appears that it does or will relate to one or more UN-listed persons;
(b) that there is an urgent need to implement the resolution in respect of UN-listed persons to whom the resolution does or will relate; and
(c) that it is proportionate to make the order, for the purpose of temporarily imposing the requirements of Part 3 in relation to UN-listed persons to whom the resolution does or will relate, in order to avoid a risk that the resolution might not otherwise be implemented effectively in Jersey.

The effect is that any person who is, or becomes (including after the order is made), a UN-listed person under that resolution is “designated” for the purposes of the Law. The various conditions make clear that any such action taken by the Minister must always be properly proportionate to the aim and be rooted in the Minister’s belief that the resolution is indeed a UNSCR and does or will relate to listed persons.

In order to support an efficiently functioning and fair system and, specifically, in order to ensure that any human rights concerns are properly addressed, art 5 provides the interim asset freezing order with a very defined life-span. This is achieved by virtue of a sunset provision to the effect that, unless earlier revoked, an order ceases to have effect either at—

(a) the end of a period of 30 days after the day of the adoption by the UN Security Council of the UN sanctions resolution that is implemented by that order (the “relevant UN resolution”);
(b) the commencement of any order under art 2(1)(b) of the EU Implementation Law that gives effect to an EU provision that implements (in the EU) the relevant UN resolution; and
(c) the date (if any) on which the relevant UN resolution ceases to have effect.

Accordingly, the effect here is that there is absolutely no risk of overlap between UN and EU orders given that the UN orders are by their very nature “temporary” in effect. This characteristic also applies
to the “final” asset freezing order at art 6 where para (4) sets out that such a final order—

“must provide that, unless earlier revoked, it ceases to have effect on a date specified in the Order, being no later than 12 months after the Order was made or last amended”—

although a certain degree of flexibility can be introduced by way of renewal on an indefinite basis. Nevertheless, the renewal process prevents the orders from continuing on indefinitely with otherwise no check or balance. Further safeguards in this respect also come in the form of two key conditions which must be adhered to by the Minister before any final order may be enacted.

22 These are—

(a) that the resolution requires all of the provisions of Part 3 [asset freezing and reporting] to be applied in relation to the persons who are or will become UN-listed persons in relation to that resolution, or does so when regard is had to the power to grant licences under art 13; or

(b) that, although the condition in sub-para (a) is not met, it is proportionate, in order to implement the resolution effectively in Jersey, to apply all of those provisions in relation to those persons until the date specified under para (4).

23 On top of these conditions, the final order must also describe the persons who are designated but may do this “in any manner,” including by referring to the UN list which may be amended by ambulatory reference (such that each designation is automatically updated (see para 5). This need to describe those persons affected but in a flexible way strikes the desirable balance between the practical challenges of amending lists each time a new change is included and being sufficiently informative such that the subject of the order is clear.

24 At para (3) of art 6, one of the other obligations incumbent upon the Minister is to determine (before he makes a final order) whether the EU itself has already implemented the UNSCR. If it has indeed done so, the Minister must consider whether or not it would be—

“more effective and more proportionate to implement the resolution by an Order under Article 2(1)(b) of the EU Implementation Law.”

Conversely, where the EU has not implemented the UNSCR, the Minister must consider whether there is “some reason to implement the resolution in Jersey despite any apparent reason for the EU not doing so”. This power gives him appropriate discretion to address
Jersey’s own needs but also imposes a framework such that any reasoning should be clearly justifiable. Indeed, the Minister has considerable discretion to act under the UNFS Law in a variety of ways. One particular provision to note here is what is set out under art 3(5)—

“(5) The Minister may by Order—

(a) provide that a particular UN-listed person is not, despite any or all of paragraphs (1) to (3), a designated person for the purpose of this Law; or

(b) provide that a corrected identity, description or history of a particular UN-listed person is to apply for the purpose of this Law, if satisfied that there is an inaccurate reference to Jersey, or to a matter relating to Jersey, in the identity, description or history of that person in—

(i) the resolution or instrument by virtue of which that person is a UN-listed person,

(ii) the enactment of the United Kingdom by virtue of which that person is a temporary UK-designated person, or

(iii) the EU provision by virtue of which that person is a temporary EU-designated person.”

25 Here the Minister himself may provide that, on his analysis, a UN-listed person is not a “designated person” for the purposes of the Law. This is a very significant power as it permits a departure from the international status quo where the Minister regards this as appropriate. It also allows him to provide that a corrected identity, description or history of a particular person is to apply where he is satisfied that there is an inaccurate reference to Jersey (or a matter relating to Jersey), in the identity, description or history of that person in the relevant UN, EU or UK instrument. In short, this allows for the Minister to break away from UN, EU or UK reasoning where there has clearly been some error and allows for any risk of perpetuating a mistake at international level to be avoided in Jersey.

Human rights and related considerations

26 Part 3 of the UNFS Law concerns the substantive provisions relating to asset freezing and reporting. Through arts 7–15 it sets out that if a person is “designated,” no person (“P”) may deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources. Similarly, P must not make funds or financial services available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that
P is making the funds or financial services so available. Upon similar conditions, this includes P not making funds, financial services or economic resources available to any person for the benefit of a designated person.

27 Quite simply, these are the essential prohibitions which give effect to the UNSCRs and dovetail with those prohibitions already set out at arts 13–17 of TAFL. However, it is clear that freezing the assets in this way of a designated person in the manner required will likely have drastic consequences for the individual concerned and therefore caution must be carefully exercised. Of particular concern is ensuring that any provisions are compatible with Jersey’s human rights obligations. Article 103 of the UN Charter states that obligations under the Charter prevail over conflicting obligations under other international agreements. Thus, at first sight it might be thought that implementing mandatory UN sanctions would afford an automatic defence to a claim of a breach of the European Convention on Human Rights. However, in *Nada v Switzerland*, the Grand Chamber of the European Court of Human Rights held that this does not give a state a free hand in how it chooses to implement a UN sanction. The implications of this judgment have had a profound effect upon the emerging shape of the new Law.

28 One very obvious consideration to emerge in this context is the effect and requirements under art 1 of the First Protocol to the European Convention on Human Rights (“A1P1”). In its text, A1P1 provides that—

> “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

This principle must at all times be most carefully observed in the exercise of governmental powers. Nevertheless, the need for a fair balance between the rights of the individual and society at large is given a clear priority where A1P1 goes on to provide that the State may “enforce such laws as it deems necessary to control the use of property in accordance with the general interest”. Thus, where there is any departure from the established A1P1 principle, this may be deemed acceptable where sufficient safeguards are throughout to ensure that any actions by (in this case) the Minister are proportionate and meet that balance. These principles informed the very structure of

---

13 Application no 10593/08 http://hudoc.echr.coe.int/fre?i=001-113118.
the new Law and the relevant safeguards are found in the particular specifications of the interim and final orders discussed above, particularly as regards the relevant sunset provisions and the decision processes required to be undertaken by the Minister before any order may be drafted. Part 3 continues to develop this idea by offering “options” where appropriate in order to guarantee that the system is as flexible and fair as possible. These are seen in art 12 which provides a set of “Exceptions” to the prohibitions and art 13 which establishes the ability and requirements to obtain a licence for certain activities from the Minister. Where art 12 may be relied upon it, provides that arts 7(1), 8(1) and 9(1) are not contravened by a relevant institution where it—

“credit[s] a frozen account with interest or other earnings due on the account; or payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.”

29 Further, it is specified that—

“Articles 7(1) and 8(1) do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.”

Nevertheless, the caveat exists where such an institution must also “as soon as practicable but in any case within 14 days” inform the Minister if it credits a frozen account with a payment (except in relation to interest or other earnings due on the account). Where this is not adhered to, no offence itself is committed but it is permissible for the Attorney General to apply to the Royal Court to grant an injunction against the relevant party. Similarly, there is also no contravention under this article where a payment relating to social security has been made and is made to a person “who is not a designated person, whether or not the payment is made in respect of a designated person.” Again, this “derogation” allows for a form of public interest flexibility.

30 Where exceptions are of no relevance in a given circumstance, it may be that art 13 instead is of interest. In brief, art 13 permits the Minister to issue licences to the effect that the prohibitions under the UNFS Law do not apply to anything done under the authority of such a licence. The language of the licences must be properly specific

14 Defined under art 5 of the Terrorist Asset Freezing (Jersey) Law 2011 to mean a person (whether or not an individual) who carries on financial services business in or from within Jersey; or a person (not being an individual) who is incorporated or constituted under the law of Jersey and carries on financial services business in any part of the world.
however when it comes to describing the acts which are to be authorised but the provision does allow the Minister to exercise his discretion in relation to those cases which have been brought before him for due consideration. In so doing, the Minister is provided with extensive powers to make the licences subject to conditions which may be limited or unlimited in duration. In a similar vein, they may also be varied or revoked at any time, with the applicant facing a penalty of five years’ imprisonment and a fine where any information has been submitted which is false in a material respect. This ensures that whilst offering a legitimate exemption to the prohibitions in appropriate circumstances, a robust system of asset freezing for the purposes of international sanctions is maintained.

31 To complement the emerging picture, and to further dovetail with the existing provisions under TAFL, it is also notable that that, with certain modifications, arts 22–38 of TAFL (see Part 4 of the UNFS Law) apply in the case of a person who is designated. This highlights the consistency of approach taken to Jersey’s asset freezing and sanctions systems and provides other key provisions such as obligations regarding the reporting obligations of financial institutions, the powers and duties with respect to the disclosure of information to or by the Minister and, perhaps most significantly, provisions for appeal to the Royal Court against a designation decision of the Minister. Under TAFL, the appeal process is governed primarily by arts 28 and 29 and provides as follows—

“28 Appeal to Royal Court

(1) This Article applies to any decision of the Minister—

(a) to make or vary an interim or final designation of a person;
(b) to renew a final designation of a person; or
(c) not to vary or revoke an interim or final designation of a person.[51]

(2) The person may appeal against any such decision to the Royal Court.

(3) On such an appeal, the Royal Court may make such order as it thinks appropriate.

(4) The making of an appeal under this Article does not suspend the effect of the decision to which the appeal relates.

29 Review of decisions by Royal Court
(1) This Article applies to any decision of the Minister taken in the performance of, or in connection with, his or her functions under this Law, other than a decision to which Article 28 applies.[52]

(2) A person affected by a decision to which this Article applies may apply to the Royal Court for the decision to be set aside.

(3) In determining whether the decision should be set aside, the Court must apply the principles applicable on an application for judicial review.

(4) If the Court decides that the decision should be set aside it may make any such order, or give any such relief, as may be made or given in proceedings for judicial review.”

32 There are also various rules set out for appeals and reviews by reference to art 30 which in turn refers to the Schedule, however, the headline message must be that in the context of many clear safeguards under the UNFS Law, this inclusion provides that even though temporary, the ministerial orders enacted thereunder can be subject to challenge by the court on application by a person affected and the court may then make an order that it deems appropriate. In other words, despite the considerable powers available to the Minister to enact orders both interim and final, that power is equally tempered at all times by both time limitations and the ultimate jurisdiction of the Royal Court.

**Penalties**

33 On starting work on the new UNFS Law, it became quickly apparent that there was an inconsistency between the accepted seriousness of an offence and the maximum level of penalty which was applicable by virtue of orders made by the Minister under the EU Implementation Law, the MLWDD Law, and TAFL. Under TAFL, the principle prohibitions under arts 13–17 carry a maximum penalty of seven years’ imprisonment and a fine. Conversely, EU sanctions orders made under the EU Implementation Law attracted a penalty instead of two years’ imprisonment and a fine. Similarly, any direction under art 14 (Offences) of the MLWDD Law carried the same two years’ imprisonment and a fine penalty. This discrepancy between the provisions on inspection was obvious.

34 In 2016, a report published by the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) found that Jersey has a “mature and sophisticated regime for tackling money laundering and the financing of terrorism.” Accordingly, the Island was assessed to be
in the principal tier of jurisdictions assessed under the 2003 Financial Action Task Force recommendations on International Standards on Combating Money Laundering and the Financing of Terrorism.\textsuperscript{15} Under its Recommendations FATF sets out that the penalties for sanctions-related offences should always reflect the seriousness of the offence and be sufficiently dissuasive. On this basis, the UK amended its (now) Policing and Crime Act 2017 in order to similarly increase the penalties for equivalent offences under the Anti-Terrorism, Crime and Security Act 2001, the Counter Terrorism Act 2007 and the European Communities Act 1972. The decision was therefore taken that in order to reflect a more consistent approach in Jersey, and to acknowledge that the equivalent offences relating to breaches of sanctions under the two other Laws could be just as serious an offence, the relevant maximum penalties should be commensurate and the Laws were appropriately amended by virtue of new provisions under the UNFS Law.

**Appointed Day Orders**

35 One further novel aspect of the new UNFS Law that is worth noting is the provision in art 25 for it to be brought into force on a day appointed by order by the Minister, instead of by the usual Act of the Assembly. This decision was taken for a range of reasons, including the enablement of the timing of the commencement to be very precisely controlled and to reflect UK timing and the needs of the financial services industry for certainty and consistency. Thus the new power was used by the Minister to make the United Nations Financial Sanctions (Jersey) Law 2017 (Appointed Day) (Jersey) Order 2017, bringing the UNFS Law into force on 1 April 2017. This date was chosen specifically in order to conform with the date on which Part 8 of the Policing and Crime Act was brought into force in the UK by the Policing and Crime Act 2017 (Commencement No 2) Regulations 2017, which were only made on 28 March 2017 (the Order was made two days later, just in time).

\textsuperscript{15} http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.
Conclusion

36 The UNFSL forms part of Jersey’s ongoing work on sanctions legislation. It may mean that eventually the remaining Orders in Council which have been extended to Jersey can be finally repealed (at least in relation to Jersey, depending on Guernsey’s position). Of course the UK civil service is increasingly busy with the challenges of Brexit, and this itself may have a profound effect on how international sanctions are approached in the future, both in the UK and in Jersey. With this in mind, the UK has just recently produced a consultation paper\footnote{https://www.gov.uk/government/consultations/public-consultation-on-the-united-kingsdoms-future-legal-framework-for-imposing-and-implementing-sanctions.} which sets out its initial plans for a new sanctions regime after Brexit, and this may provide the basis of a whole new chapter in Jersey’s sanctions story.

Matthew Waddington is an Assistant Law Draftsman in the Law Draftsman’s Office, Jersey. He previously drafted legislation for a British Overseas Territory (Akrotiri and Dhekelia in Cyprus) when Cyprus joined the EU. He has also worked for the Law Commission (England and Wales), and as a university lecturer and in practice as a solicitor in England.

Victoria Bell is a Jersey Advocate and Legal Adviser at the Law Officers’ Department. She works primarily on EU, international and constitutional matters, with a particular focus upon Brexit and its legal implications for Jersey.