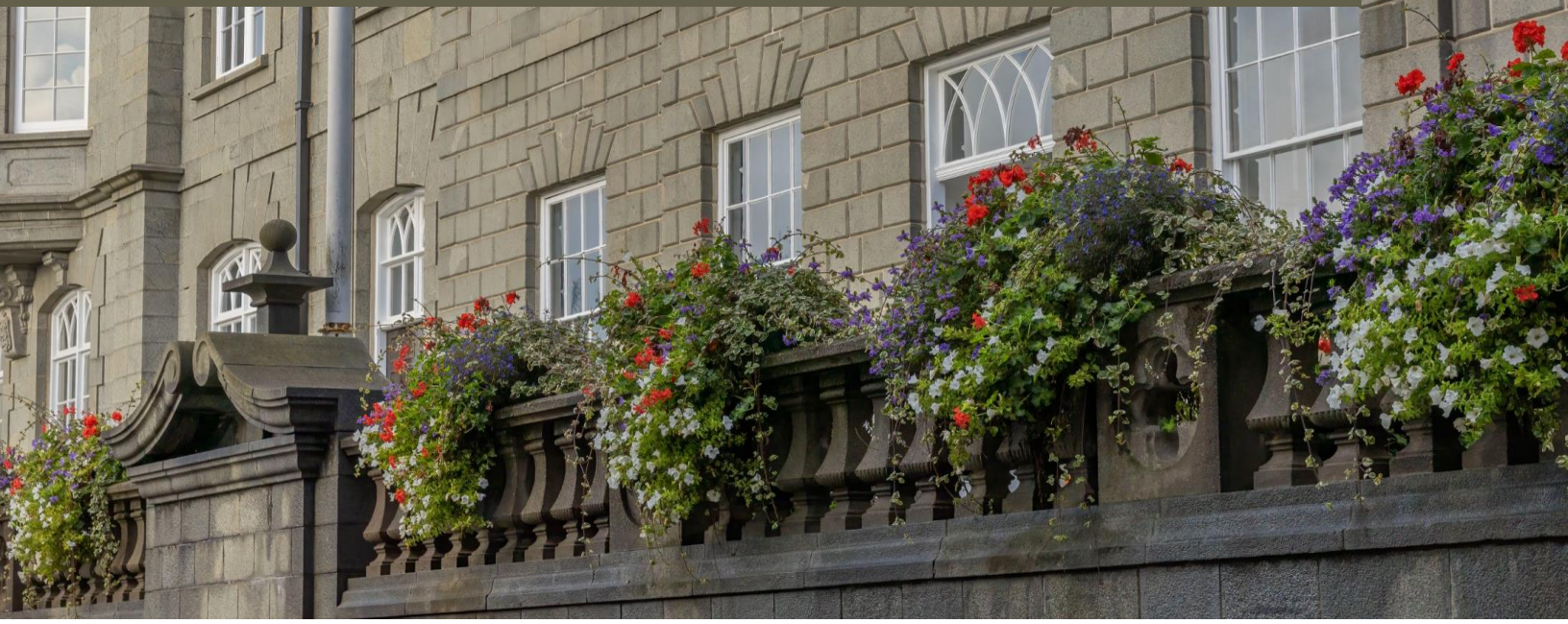




Schedules 8 and Schedule 9 of the Criminal Justice  
(Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

# Guidance



## Background

Schedules 8 and 9 (“**Schedule 8**” and “**Schedule 9**” and together the “**Schedules**”) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “**POC Law**”), impose new requirements on owners and managers of certain firms employing lawyers giving advice to third parties in Guernsey, whether that be non-locally qualified lawyers (Schedule 8), or locally admitted Advocates (Schedule 9).

Requirements include notification of the information specified in the relevant Schedule to either the Administrator of non-locally qualified legal professionals (the “**Administrator**”), or, in respect of locally admitted Advocates, His Majesty’s Greffier (“**HM Greffier**”) (the “**notification requirements**”).

The notification requirements have been introduced to ensure that Guernsey has robust provisions in place to prevent unfit persons from owning or managing law firms.

The notification requirements are intended to assess suitability and fitness to practice in relation to AML/CFT standards. They are not intended to replicate or replace the rules of professional conduct set by regulatory or supervisory bodies and any complaints relating to standards of professional conduct should be reported to the relevant supervisory body for non-locally qualified legal professionals, or to the Chambre de Discipline, in accordance with the Guernsey Bar (Bailiwick of Guernsey) Law, 2007, for locally qualified Advocates, in the first instance.

This guidance has been issued to assist those persons on whom the Schedules place obligations to comply with them. It needs to be read in conjunction with the POC Law and in the event of any inconsistency, the provisions of the POC Law prevail. We will have regard to the Guidance when exercising our functions as set out in the Schedules.

### Schedule 9 – Functions of HM Greffier regarding Advocates

HM Greffier holds and maintains a Register of locally admitted Advocates pursuant to the Guernsey Bar (Bailiwick of Guernsey) Law, 2007 (the “**Bar Law**”). Schedule 9 supplements the provisions of the Bar Law by requiring certain notifications also be made to HM Greffier to ensure that Advocates involved in managing local legal services businesses are fit to do so. As such, this guidance should be read in conjunction with the Bar Law, as well as the POC Law.

## Definitions

"**local legal services**" means the business of being an Advocate<sup>1</sup>.

"**local legal services business**" means a business engaged in local legal services that carries on, or holds itself out as carrying on, business in, or from within, the Bailiwick<sup>2</sup>

"**managing Advocate**" means an Advocate participating in, or being in any way concerned (directly or indirectly) in the management of a local legal services business.

A "**beneficial owner**" has the meaning given in paragraph 22 of Schedule 3 of the POC Law, subject to the following modification: wherever "25%" appears, there is substituted "15%".

## The Notification Requirements

### Initial notification

#### Who must notify HM Greffier?

Advocates who are, or intend to become, managing Advocates, or a person or body acting on his or her behalf, which may be the firm he or she is employed by or involved with.

#### When must initial notification be made?

Managing Advocates must notify HM Greffier within 14 days of Schedule 9 coming into force.

Thereafter, any person intending to become a managing Advocate must notify HM Greffier, or ensure a person or body acting on his or her behalf notifies HM Greffier, before he or she becomes a managing Advocate:

#### What information is required to be notified?

A person or body notifying HM Greffier under paragraph 3 of Schedule 9 must provide information specified by HM Greffier, including information relating the minimum standards test.

### The Minimum Standards Test

Paragraph 3(4) of Schedule 9 describes "information relating to the minimum standards test" as information relating to whether a person is fit to be an Advocate.

Such information includes certification as to whether the subject of the notification has at any time

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- (a) been convicted of any offence<sup>3</sup>.
- (b) engaged in any business practices which are, or which might reasonably be regarded as appearing to be, deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise

<sup>1</sup> but does not include such a business in circumstances where that business is not required to register with the GFSC pursuant to Schedule 5 of the POC Law.

<sup>2</sup> and, for the avoidance of doubt, does not include a business which is not required to register with the GFSC pursuant to Schedule 5 of the POC Law.

<sup>3</sup> This does not include any conviction that is spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002).

reflect discredit on the person's method of conducting business or the suitability to carry on legal services, or

- (c) engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her soundness of judgement'.

This guidance does not attempt to provide an exhaustive list of what types of business conduct, behaviour or practices would be considered to be deceitful, oppressive, improper, or casting doubt on soundness of judgement as HM Greffier considers Advocates to be well placed to assess appropriate standards of conduct and behaviour.

In addition to information relating to the minimum standards test, HM Greffier requires the information specified in the Initial Notification – Managing Advocates Form be submitted.

This includes a managing Advocate's:

- (a) personal details,
- (b) employment history, including when he or she became a managing Advocate,
- (c) details of any professional memberships,
- (d) details of any disciplinary or investigatory proceedings initiated by any supervisory or regulatory body, whether resulting in official sanction or not, and
- (e) whether the managing Advocate is a beneficial owner of the local legal services business and if so, the percentage of that beneficial ownership.

### Ongoing Notifications

Ongoing notification requirements apply to:

- (a) managing Advocates, and (where relevant),
- (b) any person or body who made the initial notification on behalf of a managing Advocate and who continues to act on his or her behalf. This could include firms who make notifications on behalf of managing Advocates.

Ongoing notification requirements are:

- (a) the provision of any information relating to the minimum standards test requested by HM Greffier, **within 21 days** of being requested to do so, and
- (b) notification of any change or changes in the information supplied in the initial notification **within 21 days** of the change occurring.

Where any other person or body (including law firms) submit initial and ongoing notifications on behalf of managing Advocates, HM Greffier should be notified where that Advocate ceases to be a managing Advocate, within 21 days, as being a change in information previously notified to HM Greffier.

Ongoing notification can be made by completing:

### *Ongoing Notification - Advocate*

## *Ongoing Notification – Local legal services business*

### **Ancillary powers of HM Greffier**

HM Greffier has power to do anything necessary or expedient for the purpose of exercising his functions under the Schedule, including power to:

- (a) require production of documents, accounts, and information from such persons as he or she thinks fit. Such persons include Advocates, local legal services businesses and beneficial owners, directors, partners controllers and managers of local legal services businesses; and
- (b) publish information, guidance, reports and other documents.

### **Referral to the Chambre**

Where information provided to HM Greffier relating to the minimum standards test in respect of managing Advocates is such that, in the opinion of HM Greffier, the managing Advocate is not a fit person to be an Advocate, HM Greffier shall refer the managing Advocate to the Bâtonnier of the Guernsey Bar under the Bar Law.

### **Offences**

Under paragraph 6 of Schedule 9, it is an offence to produce or furnish, or recklessly produce or furnish, any information to HM Greffier which is false or misleading in a material particular.

### **Cooperation and information sharing**

Paragraph 8 of Schedule 9 provides HM Greffier with a power to share any information provided by managing Advocates to persons and bodies listed therein, where HM Greffier considers it necessary and proportionate for the performance of the functions of those bodies or persons.

HM Greffier intends to share information with and foster close working relationships with the GFSC and the Administrator of non-locally qualified legal professionals to further the purpose of preventing unfit persons from being Advocates and protecting the interests of the people, and the reputation of the Bailiwick of Guernsey.