

# **BILLET D'ÉTAT No. VII, 2009**

**25<sup>th</sup> February 2009**

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# PROJET DE LOI

ENTITLED

## **The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009**

### ARRANGEMENT OF SECTIONS

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1. Admissibility of hearsay evidence.

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## **The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009**

**THE STATES**, in pursuance of their Resolutions of the 24<sup>th</sup> February, 2000<sup>a</sup>, the 31<sup>st</sup> May 2006<sup>b</sup> and the 25<sup>th</sup> February 2009<sup>c</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 Islands of Guernsey and Alderney.

### *Admissibility of hearsay evidence*

#### **Admissibility of hearsay evidence.**

**1.** (1) In civil proceedings, evidence shall not be excluded on the ground that it is hearsay.

(2) In this Law -

- (a) "**hearsay**" means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated, and
- (b) references to hearsay include hearsay of whatever degree.

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<sup>a</sup> Article V of Billet d'État No. VI of 2000.

<sup>b</sup> Article X of Billet d'État No. X of 2006.

<sup>c</sup> Article \* of Billet d'État No. \*\* of 2009.

(3) Nothing in this Law affects the admissibility of evidence which is admissible by virtue of other enactments or under customary law.

(4) The provisions of sections 2 to 6 do not apply in relation to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

*Safeguards in relation to hearsay evidence*

**Notice of proposal to adduce hearsay evidence.**

2. (1) A party proposing to adduce hearsay evidence in civil proceedings shall, subject to the following subsections, give to the other party or parties to the proceedings -

- (a) notice of that fact, and
- (b) at their request, such particulars of or relating to the evidence,

as is reasonable and practicable in the circumstances for the purpose of enabling the parties to deal with any matters arising from its being hearsay.

(2) Rules of court may make provisions -

- (a) specifying classes of proceedings or evidence in relation to which subsection (1) does not apply, and
- (b) as to the manner in which (including the time within which) the duties imposed by subsection (1) are to be complied with in the cases where it does apply.

(3) Subsection (1) may be excluded by agreement of the parties, and the requirement to give notice may, in any case, be waived by the person to whom notice is required to be given.

(4) At any stage in the proceedings, the court may relieve a party from the requirements of subsection (1) if it considers it necessary or desirable to do so.

(5) Failure to comply with subsection (1), or with rules made under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the court -

- (a) in considering the exercise of its powers with respect to the course of proceedings and costs, and
- (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 4.

**Power to call witness for cross-examination on hearsay statement.**

3. Rules of court may provide that where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine him on the statement as if -

- (a) he had been called by the first-mentioned party, and
- (b) the hearsay statement were his evidence in chief.

**Considerations relevant to weighing of hearsay evidence.**

4. (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings, the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following -

- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness,
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated,
- (c) whether the evidence involves multiple hearsay,
- (d) whether any person involved had any motive to conceal or misrepresent matters,
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose,
- (f) whether the circumstances in which the evidence is adduced as hearsay suggest an attempt to prevent proper evaluation of its weight, and



- (g) any other circumstances which the court may, in the interests of justice, consider relevant.

*Supplementary provisions as to hearsay evidence*

**Competence and credibility.**

5. (1) Hearsay evidence shall not be admitted in civil proceedings if it is shown to consist of, or to be proved by means of, a statement made by a person who, when making the statement was not competent as a witness.

(2) For the purpose of subsection (1) "not competent as a witness" means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings; but a child shall be treated as competent as a witness if he satisfies the requirement of sections 5(1)(a) and (b) of the Administration of Justice (Bailiwick of Guernsey) Law, 1991.<sup>d</sup>

(3) Where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness -

- (a) evidence which if he had been so called would be admissible for the purpose of attacking or supporting his credibility as a witness, is admissible for that purpose in the proceedings, and
- (b) evidence which tends to prove that, whether before or after he made the statement, he made any other

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<sup>d</sup> Order in Council No. I of 1991.

statement inconsistent with it, is admissible for the purpose of showing that he had contradicted himself,

Provided that evidence may not be given of any matter of which, if he had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

**Previous statements of witnesses.**

6. (1) The provisions of this Law as to hearsay evidence in civil proceedings also apply (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings, subject to the following provisions.

(2) A party who has called or intends to call a person as a witness in civil proceedings may only adduce evidence of a previous statement made by that person -

- (a) with the leave of the court, or
- (b) for the purpose of rebutting a suggestion that his evidence has been fabricated.

(3) Subsection (2) does not prevent a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as his evidence.

(4) Where, in any civil proceedings, Article 28 of the 1865 Law applies (*Déclarations faites hors de cour par témoin*), this Law does not authorise the adducing of evidence of a previous inconsistent or contradictory statement

except in accordance with that Article, or otherwise as the court may determine in the interests of justice.

This provision is without prejudice to any provision made by rules of court under section 3 (power to call witnesses for cross examination on hearsay statement).

(5) Nothing in this Law affects any rule of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.

(6) Nothing in this section prevents a statement of any description referred to above from being admissible by virtue of section 1 (admissibility of hearsay evidence) as evidence of the matters stated.

**Evidence formerly admissible at customary law.**

7. (1) In any civil proceedings a statement which, if this Law had not been passed, would by virtue of any rule of law mentioned in subsection (2) have been admissible as evidence of any fact stated therein, shall be admissible as evidence of that fact.

(2) The rules of law referred to in subsection (1) are those where in any civil proceedings -

- (a) an admission adverse to a party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission,

- (b) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein,
- (c) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated therein, or
- (d) records (for example, the records of certain courts, Orders in Council, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated therein.

(3) In any civil proceedings, a statement which tends to establish reputation or family tradition with respect to any matter and which, if this Law had not been passed, would have been admissible in evidence by virtue of any rule of law mentioned in subsection (4) -

- (a) is admissible in evidence in so far as it is not capable of being rendered admissible under section 2 (notice of proposal to adduce hearsay evidence) or 4 (considerations relevant to weighing of hearsay evidence) of this Law, and
- (b) if given in evidence (whether by virtue of paragraph (a) or otherwise) shall be admissible as evidence of the matter reputed or handed down,

and without prejudice to paragraph (b), reputation shall, for the purposes of this Law, be treated as a fact and not as a statement or multiplicity of statements dealing with the matter reputed.

(4) The rules of law referred to in subsection (3) are those where in any civil proceedings -

(a) evidence of a person's reputation is admissible for the purpose of establishing his good or bad character,

(b) evidence of reputation or family tradition is admissible for the purpose of -

(i) proving or disproving pedigree or the existence of the marriage, or

(ii) proving or disproving the existence of any public or general right or identifying any person or thing.

### *Privilege*

#### **Privilege against incrimination of self or spouse.**

8. (1) The right of a person in any legal proceedings, other than criminal proceedings, to refuse to answer any question or produce any document or thing if to do so might expose that person to proceedings for an offence or for the recovery of a penalty -

- (a) shall apply only as regards criminal offences under the law of Guernsey or the law of Alderney and penalties provided for by such laws, and
- (b) shall include a like right to refuse to answer any question or produce any document or thing, if to do so would tend to expose the husband or wife of that person to proceedings for any such criminal offence or for the recovery of any such penalty.

(2) In so far as any enactment conferring powers of inspection or investigation confers on a person any right otherwise than in criminal proceedings to refuse to answer any question or give any evidence tending to incriminate that person, subsection (1) shall apply to that right; and every such enactment shall be construed accordingly.

(3) In so far as any existing enactment provides that in any proceedings other than criminal proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate that person, that enactment shall be construed as providing also that in such proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate the husband or wife of that person.

(4) Where any existing enactment that -

- (a) confers any powers of inspection or investigation,
- (b) provides as mentioned in subsection (3), or

further provides that any answer or evidence given by a person shall not be admissible in evidence against that person in any proceedings or class of proceedings (whether criminal or not), that enactment shall be construed as providing also that any answer or evidence given by that person shall not be admissible in evidence against the husband or wife of that person in the proceedings or class of proceedings in question.

(5) In this section "**existing enactment**" means enactments passed before this Law.

**Abolition of certain privileges.**

9. The following rules of law are hereby abrogated -

- (a) the rule whereby, in any legal proceedings, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose him to a forfeiture,
- (b) the rule whereby, in any civil proceedings, a party to the proceedings cannot be compelled to produce any document relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party,

but the rule in paragraph (a) shall not be abrogated in relation to criminal proceedings.

**Consequential amendments relating to privilege.**

10. (1) Section 1(3) of the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949<sup>e</sup> (which confers powers with respect to the taking of evidence before certain tribunals of enquiry and provides that a witness before any such tribunal shall be entitled to the same privileges and immunities as if he were a witness before the Royal Court), shall have effect as if after the word "witness" in the second place where it occurs, there were inserted the words "in civil proceedings" and, so far as it applies to Guernsey, any other existing enactment, which in relation to any tribunal, investigation or inquiry confers on persons required to answer questions or give evidence any privilege described by reference to the privileges of witnesses in proceedings before any court shall, unless the contrary intention appears, be construed as referring to the privileges of witnesses in civil proceedings before that court.

(2) Section 8(5) applies for the purposes of this section as it applies for the purposes of section 8.

*Convictions, etc., as evidence in civil proceedings*

**Convictions as evidence in civil proceedings.**

11. (1) In any civil proceedings, the fact that a person has been convicted of an offence by or before any court in Guernsey or Alderney or by a court martial there or elsewhere shall, (subject to subsection (3)) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence -

- (a) whether he was so convicted upon a plea of guilty or otherwise, and

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<sup>e</sup> Ordres en Conseil Vols. XIV, p. 45 and XXIV, p. 185.



- (b) whether or not he is a party to the civil proceedings;

but no conviction other than a subsisting one shall be admissible in evidence under this section.

(2) In any civil proceedings in which, under this section, a person is proved to have been convicted of an offence by or before any court in Guernsey or Alderney or by a court martial there or elsewhere -

- (a) he shall be taken to have committed that offence unless the contrary is proved, and
- (b) without prejudice to any other admissible evidence received for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the indictment or charge on which the person is question was convicted, shall be admissible in evidence for that purpose.

(3) Nothing in this section prejudices the operation of section 13 of this Law or any other enactment where a conviction or a finding of fact in any criminal proceedings is, for the purposes of any other proceedings, made conclusive evidence of any fact.

(4) Where in any civil proceedings the contents of any document are admissible in evidence under subsection (2), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document, shall be admissible

in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(5) In this section "**court martial**" means a court martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 and in relation to a court martial "**conviction**", means a finding of guilty which is, or falls to be treated as, the finding of the court and "**convicted**" shall be construed accordingly.

**Findings of adultery and paternity as evidence in civil proceedings.**

**12.** (1) In any civil proceedings -

- (a) the fact that a person has been found to have committed adultery in any matrimonial proceedings, and
- (b) the fact that a person has been found to be the father of a child in relevant proceedings before any court in Guernsey or Alderney or elsewhere or has been adjudged to be the father of a child in affiliation proceedings before any court in Guernsey or Alderney or elsewhere,

shall (subject to subsection (3)) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he -

- (i) committed the adultery to which the findings relates or,

- (ii) as the case may be, is (or was) the father of that child,

whether or not he offered any defence to the allegation of adultery or paternity and whether or not he is a party to the civil proceedings.

No finding or adjudication other than a subsisting one shall be admissible in evidence under this section.

(2) In any civil proceedings in which, under this section, a person is proved to have been found guilty of adultery as mentioned in subsection (1)(a), or to have been found or adjudged to be the father of a child as mentioned in subsection (1)(b) -

- (a) he shall be deemed to have committed the adultery to which the finding relates, or as the case may be, to be (or have been) the father of that child, unless the contrary is proved, and
- (b) without prejudice to any other admissible evidence received for the purpose of identifying the facts on which the finding or adjudication was based, the contents of any document which was before the court, or which contains any pronouncement of the court, in the other proceedings in question shall be admissible in evidence for that purpose.

(3) Nothing in this section prejudices the operation of any enactment where a finding of fact in any matrimonial or affiliation proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) Section 11(4) of this Law shall apply for the purposes of this section as if the reference to subsection (2) were a reference to subsection (2) of this section.

(5) In this section -

**"affiliation proceedings"** means any action of affiliation,

**"relevant proceedings"** means any proceedings where the issue of paternity is being determined, and

**"matrimonial proceedings"** means matrimonial proceedings in the Royal Court or any division thereof or in the Magistrate's Court, of Guernsey, or in the Court of Alderney, or any appeal arising out of any such proceedings.

**Conclusiveness of convictions for purposes of defamation actions.**

13. (1) In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in that action, proof that, at the time when that issue falls to be determined, he stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction shall thus be admissible in evidence.

(2) In any action under subsection (1) where a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the indictment or charge on which that person was convicted, shall, without prejudice to any other admissible evidence received for the purpose of identifying the facts on which the

conviction was based, be admissible in evidence for the purpose of identifying those facts.

(3) For the purposes of this section a person shall be taken to stand convicted of an offence if, but only if, there subsists against him a conviction of that offence by or before a court in Guernsey or Alderney or by a court martial there or elsewhere.

(4) Sections 11(4) and (5) shall apply for the purposes of this section as they apply for the purposes of section 11, but as if in section 11(4) the reference to subsection (2) were a reference to subsection (2) of this section.

(5) The provisions of this section shall apply for the purposes of any action begun after the passing of this Law, whenever the cause of action arose, but shall not apply for the purposes of any action begun before this Law comes into force or any appeal or other proceedings arising out of any such action.

#### *Other matters*

#### **Proof of statements contained in documents.**

14. (1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved -

- (a) by the production of that document, or
- (b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it,

authenticated in such manner as the court may approve.

(2) It is immaterial for this purpose how many removes there are between a copy and the original.

**Proof of records of business or public authority.**

**15.** (1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.

(2) A document shall be taken to form part of the records of a business or public authority if there is produced to the court a certificate to that effect signed by an officer of the business or authority to which the records belong.

(3) For this purpose -

(a) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given by such an officer and signed by him, and

(b) a certificate shall be treated as signed by a person if it purports to bear a facsimile of his signature.

(4) The absence of an entry in the records of a business or public authority may be proved in civil proceedings by affidavit of an officer of the business or authority to which the records belong.

(5) In this section -

"records" means records in whatever form,

"**business**" includes any activity regularly carried on over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual,

"**officer**" includes any person occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records, and

"**public authority**" includes any public or statutory undertaking, any department of the States, and any person holding office under Her Majesty.

(6) The court may, having regard to the circumstances of the case direct that all or any of the provisions of this section do not apply in relation to a particular document or record, or description of documents or records.

**Admissibility and proof of Ogden Tables.**

**16.** (1) The actuarial tables (together with explanatory notes) for use in personal injury and fatal accident cases issued from time to time by the UK Government Actuary's Department are admissible in evidence for the purpose of assessing, in an action for personal injury, the sum to be awarded as general damages for future pecuniary loss.

(2) They may be proved by the production of a copy published by, or under the authority of, Her Majesty's Stationery Office, or in such other manner as the court may consider to be just and convenient.

(3) For the purposes of this section -

- (a) **"personal injury"** includes any disease and any impairment of a person's physical or mental condition, and
- (b) **"action for personal injury"** includes an action brought by virtue of the Fatal Accidents (Guernsey) Laws 1900 and 1961<sup>f</sup>.

**Provisions as to rules of court.**

17. (1) Any power to make rules of court regulating the practice or procedure of the court in relation to civil proceedings includes power to make such provision as may be necessary or expedient for carrying into effect the provisions of this Law.

(2) Any rules of court made for the purposes of this Law as it applies in relation to proceedings in the Royal Court or any division thereof, or in the Court of Alderney apply, except in so far as their operation is excluded by agreement, to arbitration proceedings to which this Law applies, subject to such modifications as may be appropriate.

Any question arising as to what modifications are appropriate shall be determined, in default of agreement, by the arbitrator or umpire, as the case may be.

**Rules of court with respect to expert reports and oral expert evidence.**

18. (1) Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings or in connection with the obtaining or giving of legal advice are in

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<sup>f</sup> Ordres en Conseil Vols. III p.235 (Loi Relative à la Compensation qui pourra être accordée aux Familles de Personnes dont la Mort aura été causée par Accident) and XVIII p.283.



certain circumstances privileged from disclosure, provision may be made by rules of court -

- (a) for enabling the court in any civil proceedings to direct, with respect to medical matters or matters of any other class which may be specified in the direction, that the parties or some of them shall each by such date as may be so specified (or such later date as may be permitted or agreed in accordance with the rules) disclose to the other or others in the form of one or more expert reports the expert evidence on matters of that class which he proposes to adduce as part of his case at the trial, and
- (b) for prohibiting a party who fails to comply with a direction given in any such proceedings under rules of court made under paragraph (a) from adducing in evidence except with the leave of the court, any statement (whether of fact or opinion) contained in any expert report whatsoever in so far as that statement deals with matters of any class specified in the direction.

(2) Provision may be made by rules of court as to the conditions subject to which oral expert evidence may be given in civil proceedings.

(3) Without prejudice to the generality of subsection (2), rules of court made under that subsection may make provision for prohibiting a party who fails to comply with a direction given as mentioned in subsection (1)(b) from

adducing, except with the leave of the court, any oral expert evidence whatsoever with respect to matters of any class specified in the direction.

(4) Any rules of court made under this section may make different provision for different classes of cases, for expert reports dealing with matters of different classes, and for other different circumstances.

(5) References in this section to an expert report are references to a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

(6) Nothing in the foregoing provisions shall prejudice any power contained in any other enactment to make rules of court.

**Admissibility of expert opinion and certain expressions of non-expert opinion.**

19. (1) Subject to any rules of court made under this Law, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence.

(2) It is hereby declared that where a person is called as a witness in any civil proceedings, a statement of opinion by him on any relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.

(3) In this section "**relevant matter**" includes an issue in the proceedings in question.

**Evidence of foreign law.**

20. (1) In civil proceedings, a person who is suitably qualified to do so on account of his knowledge or experience, is competent to give expert evidence as to the law of any country or territory outside Guernsey or Alderney, or of any part thereof, irrespective of whether he has acted or is entitled to act as a legal practitioner there.

(2) For the avoidance of doubt, where more than one person gives expert evidence under subsection (1) and a dispute or conflict arises between the evidence given, the presiding judge shall decide which evidence is to be preferred in determining the proceedings.

(3) Where any question as to the law of any country or territory outside Guernsey or Alderney, or of any part thereof, with respect to any matter has been determined (whether before or after the passing of this Law) in any such proceedings as are mentioned in subsection (5), then in any civil proceedings (not being proceedings before a court which can take judicial notice of the law of that country, territory or part with respect to that matter) -

- (a) any finding made or decision given on that question in the first-mentioned proceedings shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that country, territory or part with respect to that matter, and
- (b) if that finding or decision, as so reported or recorded, is adduced for that purpose, the law of that country, territory or part with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is proved:

Provided that paragraph (b) shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question adduced under this subsection in the same proceedings.

(4) A party to any civil proceedings shall not be permitted to adduce any finding or decision under subsection (3) unless he has -

- (a) given notice that he intends to do so, pursuant to rules of court given to every other party to the proceedings, or
- (b) obtained the leave of the court.

(5) The proceedings referred to in subsection (3) are the following, whether civil or criminal, namely -

- (a) proceedings at first instance in any of the courts in Guernsey or Alderney,
- (b) appeals arising out of proceedings mentioned in paragraph (a),
- (c) proceedings before the Judicial Committee of the Privy Council on appeal (whether to Her Majesty in Council or to the Judicial Committee as such) from a decision of any court outside Guernsey or Alderney.

(6) For the purposes of this section, a finding or decision on any such question as is mentioned in subsection (3) shall be taken to be reported or

recorded in citable form, if, but only if, it is reported or recorded in writing in a report, transcript or other document which, if that question had been a question as to the law of Guernsey, or the law of Alderney, could be cited as an authority in legal proceedings in Guernsey or Alderney.

*General*

**Interpretation.**

**21.** (1) In this Law -

"**civil proceedings**" includes, in addition to civil proceedings in any of the ordinary courts of law -

- (a) civil proceedings before any other tribunal, being proceedings in relation to which the strict rules of evidence apply,
- (b) an arbitration or reference, whether under an enactment or not, and
- (c) without limitation and for the avoidance of doubt, administrative proceedings,

but does not include civil proceedings in relation to which the strict rules of evidence do not apply,

"**court**" in relation to an arbitration or reference, means the arbitrator or umpire and, in relation to proceedings before a tribunal (not being one of the ordinary courts of law), means the tribunal, and "**rules of court**" shall be construed accordingly,

**"customary law"** includes common law,

**"department"** means any department, council or committee of the States of Guernsey, or the States of Alderney, howsoever called or styled,

**"document"** means anything in which information of any description is recorded, and **"copy"**, in relation to a document, means anything onto which information recorded in the document has been copied or transcribed, by whatever means and whether directly or indirectly,

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

**"hearsay"** shall be construed in accordance with section 1(2),

**"information"** includes data, however recorded,

**"judge"** means -

- (a) the Bailiff, Deputy Bailiff, Lieutenant Bailiff or any Judge of the Royal Court, or
- (b) the Chairman of the Court of Alderney,

**"legal proceedings"** includes an arbitration or reference, whether under an enactment or not,

**"the 1865 Law"** means the Law entitled "Loi relative aux Preuves" registered on 8<sup>th</sup> July, 1865, as amended<sup>g</sup>,

**"oral evidence"** includes evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs,

**"the original statement"**, in relation to hearsay evidence, means the underlying statement (if any) by -

- (a) in the case of evidence of fact, a person having personal knowledge of that fact, or
- (b) in the case of evidence of opinion, the person whose opinion it is,

**"rule of law"** includes any rule of customary or common law,

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

**"statement"** means any representation of fact or opinion, however made, and

**"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.

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<sup>g</sup> Ordres en Conseil Vol. I, p. 422; Vol. III, p. 248; Vol. XVII, p. 272; Vol. XVIII, p. 75.

(2) For the avoidance of doubt it is hereby declared that in any enactment references to a person's husband or wife do not include references to a person who is no longer married to that person.

(3) A reference in this Law to any other enactment is, unless the context otherwise requires, a reference thereto as amended, re-enacted (with or without modification), extended or applied, whether by or under any other enactment.

(4) References to giving evidence in sections 8(4) and 22(1) are references to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(5) The provisions of the Interpretation (Guernsey) Law, 1948<sup>h</sup> shall apply to the interpretation of this Law.

**Savings and amendments to the 1865 Law.**

**22.** (1) Nothing in this Law shall prejudice the operation of any enactment or rule of law which provides that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings.

(2) Nothing in this Law shall prejudice -

(a) any power of a court, in any legal proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion, or

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



- (b) the operation of any agreement (whenever made) between the parties to any legal proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.

(3) Nothing in this Law affects the exclusion of evidence on grounds other than that it is hearsay.

This applies whether the evidence falls to be excluded in pursuance of any enactment or rule of law, for failure to comply with rules of court or an order of the court, or otherwise.

(4) Nothing in this Law affects the proof of documents by means other than those specified in section 14 or 15.

(5) In the 1865 Law -

- (a) Article 30 is repealed,
- (b) in Article 35, insert after "le contenu de la pièce" the words "excepté dans les cas spéciaux reconnus par la loi", and
- (c) Article 36 has effect subject to the provisions of this Law.

(6) For the avoidance of doubt, the States may, in accordance with sections 23 and 24, make further amendments to the 1865 Law.

**Power to make Ordinances in relation to evidence etc.**

23. (1) The States may by Ordinance make provision for and in relation to evidence in civil proceedings.

(2) Without prejudice to the generality of subsection (1), an Ordinance under this section may make provision for and in relation to -

- (a) the matters which are to constitute evidence and the extent to which evidence is admissible,
- (b) the manner and way in which evidence is adduced,
- (c) the requirements to be satisfied before evidence may be adduced,
- (d) the circumstances in which evidence shall or may be excluded,
- (e) the weight to be given to any evidence,
- (f) the evidential means by which matters may be proved,
- (g) the procedural requirements and safeguards relating to the receipt of evidence,
- (h) the taking of evidence anywhere in Guernsey or Alderney or elsewhere, for use in civil proceedings in Guernsey or Alderney or elsewhere,

- (i) the attendance, competence and compellability of witnesses.

**Additional provision as to Ordinances.**

**24.** (1) An Ordinance under this Law shall be made by the States after consultation with the Policy and Finance Committee of the States of Alderney (where the Ordinance is to have effect in Alderney).

(2) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder,
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment), and
- (c) may delegate to the Royal Court, or the Court of Alderney, power to provide by rules of court for any matter for which provision may be made by Ordinance and in any such case the provisions of paragraphs (a) and (b) and subsection (3) shall apply as if –
  - (i) for the expressions "Ordinance" or "an Ordinance" (wherever appearing) there were substituted "rules of court", and

- (ii) for the expression "a subsequent Ordinance" (in paragraph (a)) there were substituted "subsequent rules of court".

(3) Any power conferred by or under this Law to make an Ordinance 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,

- (iv) different provision for Guernsey and Alderney

(4) Without prejudice to the generality of the foregoing provisions, an Ordinance under this Law may make such provision of any extent as might be made by Projet de Loi other than any provision which provides that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

**Transitional provisions.**

**25.** (1) Subject to subsection (2), the provisions of this Law shall not apply in relation to proceedings begun before commencement.

(2) Transitional provisions for the application of the provisions of this Law to proceedings begun before commencement may be made by rules of court or practice directions.

**Citation.**

**26.** This Law may be cited as The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009.

**Commencement.**

**27.** This Law shall come into operation on a date or dates to be appointed by Ordinance of the States; and such an Ordinance may appoint different days for different provisions and different purposes.

# PROJET DE LOI

ENTITLED

## **The Competition (Enabling Provisions) (Guernsey) Law, 2009**

**THE STATES**, in pursuance of their Resolutions of the 27<sup>th</sup> July, 2006<sup>a</sup>, the 12<sup>th</sup> March, 2008<sup>b</sup> and the 25<sup>th</sup> February, 2009<sup>c</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 islands of Guernsey, Herm and Jethou.

### **Power to enact Ordinances in relation to competition.**

1. The States may by Ordinance make such provision as they think fit in relation to -

- (a) the abuse of a dominant position by undertakings,
- (b) anti-competitive practices of undertakings, and
- (c) the merger and acquisition of undertakings.

### **Meaning of abuse of a dominant position.**

2. In this Law an "**abuse of a dominant position**" means an abuse by one or more undertakings of a dominant position within any market in Guernsey for

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<sup>a</sup> Article XVIII of Billet d'État No. XIII of 2006.

<sup>b</sup> Article IX of Billet d'État No. III of 2008.

<sup>c</sup> Article \*\* of Billet d'État No. \*\* of 2009.

goods or services and, without limitation, includes -

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
- (b) limiting production, markets or technical development to the prejudice of consumers or any class or description thereof,
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
- (d) making the conclusion of contracts subject to the acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

**Meaning of anti-competitive practice.**

3. In this Law an "**anti-competitive practice**" means any agreement between undertakings which has the object or effect of preventing competition within any market in Guernsey for goods or services and, without limitation, includes -

- (a) directly or indirectly fixing purchase or selling prices or any other trading conditions,
- (b) limiting or controlling production, markets, technical development or investment,

- (c) sharing markets or sources of supply,
- (d) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
- (e) making the conclusion of contracts subject to the acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

**Meaning of merger and acquisition.**

4. (1) A "merger or acquisition" occurs for the purposes of this Law when -

- (a) there is a transfer from one undertaking ("the transferor") to another ("the transferee") of the business of the transferor, or
  - (b) an undertaking, or a person who controls an undertaking, directly or indirectly acquires or establishes control of -
    - (i) another undertaking, or
    - (ii) the business of another undertaking.
- (2) Control of a business or undertaking may be direct or indirect



and exists if decisive influence is capable of being exercised in respect of it.

In determining whether decisive influence exists there shall be taken into account, in addition to the ostensible effect in law of any document, transfer, assignment or other instrument, act or arrangement, all relevant facts and circumstances of the case.

(3) A merger or acquisition also occurs for the purposes of this Law -

- (a) if an undertaking acquires the whole or a substantial part of the assets of another undertaking and the result of the acquisition is to place the acquiring undertaking in a position to replace or substantially replace the other undertaking in the business in which it was engaged immediately before the acquisition, or
- (b) on the creation of a joint venture.

(4) A joint venture is created when a business previously carried on independently by two or more undertakings, or a new business, is carried on jointly by them, whether or not in partnership or by means of their joint control of, or ownership of shares in the capital of, a body corporate.

(5) Without prejudice to the generality of the foregoing, a merger or acquisition -

- (a) may be achieved in any manner, including -

- (i) by purchase, lease, acquisition of shares or assets, or by some other disposition or arrangement or by operation of law,
- (ii) by amalgamation of or other combination between undertakings or their businesses,

and whether or not the parties to the merger or acquisition, or their business or assets, thereafter maintain identities which are distinct,

- (b) may be effected by a single transaction or by a series of two or more transactions, and
- (c) may take place whether or not any property is transferred by the transferor to the transferee.

(6) References in this section to an undertaking or business are references to the whole or any part of the undertaking or business.

**Specific matters for which Ordinances may make provision.**

5. An Ordinance under section 1 may, without limitation, make provision in relation to the following matters -

- (a) the prohibition, restriction or regulation of matters set out in section 1,
- (b) exceptions, exemptions and derogations from any such prohibition, restriction or regulation including, without limitation, exceptions, exemptions and derogations -

- (i) in the public interest,
  - (ii) as a matter of public policy,
  - (iii) for the benefit of consumers or any class or description thereof, or
  - (iv) on social, community, economic, ethical and other grounds,
- (c) the establishment of an office of Director General of Competition ("**the Director General**"), whether as an office of a department of the States or as a separate legal entity, with responsibility for the administration and enforcement of this Law and any Ordinance under section 1, and with such rights, liabilities, functions and capacity as may be specified by Ordinance,
- (d) the appointment, term of office and termination of office of the Director General,
- (e) the vesting of any right, liability, power and property in the Director General,
- (f) the investigation by the Director General of matters set out in section 1 and the making and publication by him of reports on those matters, whether at the direction of the Department or the States,

- (g) the Director General's powers of entry, inspection, search and inquiry for the purposes of -
  - (i) the administration and enforcement of any Ordinance under section 1,
  - (ii) carrying out investigations and making reports, and
  - (iii) generally for the performance of his functions,
- (h) the production, seizure, retention, use and disclosure of documents and information,
- (i) the obtaining and exchanging of information,
- (j) the service of documents,
- (k) the establishment by the Director General of his office, the appointment of his staff and the delegation of his functions,
- (l) the issue by the Director General of codes of practice, guidance and recommendations, and their status in law,
- (m) the imposition by the Director General of directions, orders, penalties, fines, interim measures and other sanctions,

- (n) the appointment by the Director General of any person or body to advise him in relation to the exercise of his functions,
- (o) the production and publication by the Director General of reports and accounts and the auditing of accounts,
- (p) the making of grants and loans to the Director General,
- (q) the establishment by the Director General of a fund and the status of that fund for income tax purposes,
- (r) the objectives to be promoted and the other matters to be taken into account by the Director General, the Department and the States in carrying out their respective functions under this Law and any Ordinance under it,
- (s) the giving to the Director General of directions and recommendations by the Department, the States or any other body,
- (t) co-operation and the provision of mutual assistance by the Director-General, in relation to matters set out in section 1, with or to authorities -
- (i) discharging functions corresponding to any of his own, or

- (ii) which are of any prescribed class or description,
- (u) privilege and duties of confidentiality and exceptions, exemptions and derogations therefrom,
- (v) the implementation of -
  - (i) any international instrument relating to matters set out in section 1 or any aspect thereof,
  - (ii) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,

subject to such exceptions, adaptations and modifications as may be specified in the Ordinance,
- (w) the administration and enforcement of any Ordinance under this Law including, without limitation, provision as to -
  - (i) appeals in relation to decisions in respect of such administration and enforcement,
  - (ii) modes of civil enforcement (including, without limitation, proceedings for injunctions),
  - (iii) modes of criminal enforcement (but subject to

section 6(5)),

- (iv) remedies in respect of contraventions of any prohibition, restriction, regulation, duty, obligation or requirement imposed by an Ordinance under this Law (but subject to section 6(5)), and
- (v) the establishment of a tribunal and a panel of persons from whom the members of the tribunal are to be drawn,

and otherwise as to the administration of justice in relation to matters set out in section 1,

- (x) the jurisdiction and powers of the courts, and the constitution and procedure of those courts, in relation to matters set out in section 1,
- (y) provision as to evidence including, without limitation, rules as to the admission of evidence and evidential presumptions,
- (z) the authorisation of, and conferring of functions on, any person, body or office including, without limitation, the Director General of Competition, the Director General of Utility Regulation, the Department and the States (and their respective officers) for the purposes of the administration and enforcement of any Ordinance under this Law,

- (aa) the granting (conditionally or otherwise), refusal, variation, revocation and suspension of licences or other descriptions of authorisation or approval for the doing of anything restricted, regulated or controlled by an Ordinance under this Law,
- (bb) the making of applications for such licences, authorisations or approvals,
- (cc) the levying of fees, and
- (dd) the recovery of costs associated with the administration and enforcement of any Ordinance under this Law.

**General provisions as to Ordinances, etc.**

6. (1) The States may by Ordinance amend -

- (a) sections 2, 3 and 4 so as to amend the meanings of the expressions "abuse of a dominant position", "anti-competitive practice", "merger or acquisition", "control" and "joint venture", and
- (b) section 7(1) so as to amend the meaning of any expression defined therein or to define any other expression,

where they consider it necessary or expedient to do so for the purpose of -



- (i) enabling the Director General more effectively to carry out any of his functions,
- (ii) enhancing or protecting the reputation or economic interests of Guernsey,
- (iii) enhancing or facilitating competition, or prohibiting, restricting or regulating the prevention of competition, in the interests of consumers or any class or description thereof or the operation of any market in Guernsey,
- (iv) discharging any international obligation to which Guernsey is subject, or
- (v) assisting, in the interests of the public or otherwise, any authority which appears to the States to discharge in a place outside Guernsey functions corresponding to any of the functions of the Director General.

The provisions of this subsection are without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).

(2) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
- (b) may contain such consequential, incidental,

supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(3) Any power to make an Ordinance under this Law 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,

(iv) different provision for different classes, descriptions and categories of markets,

businesses and undertakings.

(4) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

- (a) may, subject to subsection (5), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) may empower the Department, any other department of the States and any other body (including, without limitation, any court in Guernsey) to make or issue orders, rules, regulations, codes or guidance, whether as to matters in respect of which an Ordinance can be made under this Law or otherwise,
- (c) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1 or any international instrument relating to such matters,
- (d) may provide that no liability shall be incurred by any specified person, body or office in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith,
- (e) may make provision under the powers conferred by this Law notwithstanding the provisions of any

enactment for the time being in force,

- (f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law,
  - (g) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.
- (5) An Ordinance under this Law may not -
- (a) provide for offences to be triable only on indictment,
  - (b) authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
  - (c) authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

**Interpretation.**

7. (1) In this Law, unless the context requires otherwise, the expressions listed below shall be construed as follows -

**"abuse of a dominant position" : see section 2,**

**"agreement between undertakings"** means any type of agreement, arrangement or understanding between undertakings, whether or not legally enforceable, and includes a decision by an association of undertakings and a concerted practice involving undertakings,

**"anti-competitive practice"** : see section 3,

**"business"** includes any economic activity, trade or profession, whether or not carried on for profit,

**"control"** of a business or undertaking : see section 4(2),

**"the Department"** means the Commerce and Employment Department,

**"a department"** means any department, council or committee of the States, however styled,

**"Director General"** means the Director General of Competition, the office of whom is to be established by Ordinance under this Law,

**"document"** includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form -

(a) in which it can be taken away, and

- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

**"electronic form"**, in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

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

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

**"implementation"**, in relation to -

- (a) any international instrument,
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,

includes the enforcement or enactment thereof, and the securing of the administration, execution, recognition, exercise or enjoyment thereof, in or under domestic law,

**"international instrument"** means -

- (a) any convention, treaty, protocol or other international instrument, or any provision thereof, or
- (b) any Community provision within the meaning of

section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>d</sup>,

whether or not binding on Guernsey,

**"joint venture"** : see section 4(4),

**"market in Guernsey"** includes -

- (a) any market which operates only in a part of Guernsey, and
- (b) so far as it operates in Guernsey or a part of Guernsey, any market which operates there and in another country or territory or in a part of another country or territory,

and references to a market for goods or services include references to a market for goods and services,

**"merger or acquisition"** : see section 4,

**"person"** includes an individual and also -

- (a) a body corporate, and
- (b) a partnership or other unincorporated body of persons,

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<sup>d</sup>

Order in Council No. III of 1994.

incorporated or established with or without limited liability in any part of the world,

**"prescribed"** means prescribed by Ordinance under this Law,

**"prevent"**, in relation to competition, means prevent, restrict or distort competition or, in each case, attempt to do so,

**"price"** includes any charge, fee or valuable consideration of any description, and any discount, margin or other element of a price,

**"service"** includes any benefit, advice, privilege or facility which is, or which is to be, provided, granted or conferred in the course of business,

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

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

**"supply"** includes -

- (a) in relation to goods, supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and
- (b) in relation to services, provide, sell, lease, grant or confer,



**"undertaking"** means a person carrying on a business and includes an association, whether or not incorporated, which consists of or includes such persons.

(2) 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.

**Citation.**

8. This Law may be cited as the Competition (Enabling Provisions) (Guernsey) Law, 2009.

## PROJET DE LOI

ENTITLED

### **The Road Traffic (Parking Fees and Charges) (Enabling Provisions) (Guernsey) Law, 2009**

**THE STATES**, in pursuance of their Resolutions of the 28<sup>th</sup> day of March, 2003<sup>a</sup>, the 31<sup>st</sup> day of March, 2006<sup>b</sup>, the 12<sup>th</sup> day of March, 2008<sup>c</sup> and the 25<sup>th</sup> day of February, 2009<sup>d</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 Island of Guernsey.

#### **General power to make Ordinances regulating parking in and upon any designated public place.**

1. The States may by Ordinance make such provision as they think fit regulating the parking of any vehicle in, or other object or thing upon, any designated public place.

#### **Specific matters for which Ordinances may make provision.**

2. An Ordinance under section 1 may, without limitation, make provision in relation to the following matters -

(a) the prohibition of the parking of any vehicle in, or

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<sup>a</sup> Resolutions 5, 6 and 7 on Article XXI of Billet d'État No. IV of 2003.

<sup>b</sup> Resolution 20 (as amended) on Article VIII of Billet d'État No. VII of 2006.

<sup>c</sup> Article IX of Billet d'État No. III of 2008.

<sup>d</sup> Article \* of Billet d'État No. \*\* of 2009

other object or thing upon, any designated public place,

- (b) exemption from any prohibition upon the parking of any vehicle in, or other object or thing upon, any designated public place, during such periods, and subject to such conditions, as may be specified, including, without limitation, conditions relating to -

- (i) the payment of specified fees or charges, and

- (ii) the display -

- (A) in such manner and during such periods,

- (B) within, or upon, such part of the vehicle, or other object or thing,

- (C) of such evidence of the payment of such fees or charges including, without limitation, such document, disc, symbol or other thing,

as may be specified,

- (c) the levying of fees or charges,

- (d) liability for payment of fees or charges levied under this Law,

(e) exemption from liability for payment of fees or charges levied under this Law including, without limitation, exemption for any specified category of -

(i) vehicle,

(ii) vehicle owner, or

(ii) person in charge of a vehicle,

from liability for payment, upon such conditions as may be specified,

(f) the suspension of any prohibition upon the parking of any vehicle in, or other object or thing upon, any designated public place -

(i) during such period, and

(ii) upon such conditions,

as may be specified,

(g) action and measures that may be taken by any specified person, or court, to ensure compliance including, without limitation -

(i) the immobilisation,

(ii) the removal and detention, and

(iii) the making of orders relating to -

(A) the forfeiture, and

(B) the destruction, or other disposal,

of any vehicle, or other object or thing, pending, in the case of immobilisation or removal or detention, payment of any fee, charge or penalty levied or payable in respect of the vehicle, or object or thing, under this Law,

(h) subject to section 3(4), the penalties which may be imposed for breach of any Ordinance, and

(i) the courts and persons which, or who, may impose penalties for breach of any Ordinance, including, without limitation -

(i) police officers,

(ii) specified departments of the States, and

(iii) persons authorised by any specified department of the States.

**General provisions as to subordinate legislation.**

3. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
  - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).
- (2) Any power to make an Ordinance under this Law 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.

(3) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

- (a) may, subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) may empower the Department, any other department, and any other body, to make or issue orders, rules, regulations, codes or guidance, whether as to matters in respect of which an Ordinance can be made under this Law or otherwise,
- (c) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith,
- (d) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force, and
- (e) may make any such provision of any such extent as might be made by *Projet de Loi*, but may not provide that a person is to be guilty of an offence as a result of

any retrospective effect of the Ordinance.

- (4) An Ordinance under this Law may not -
  - (a) provide for offences to be triable only on indictment,
  - (b) authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008,
  - (c) authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years, or
  - (d) authorise the imposition of any penalty by a person or body other than a court, except a financial penalty not exceeding £100.

**Interpretation.**

- 4. In this Law, unless the context requires otherwise –

"**a department**" means any department, council or committee of the States, however styled,

"**the Department**" means the States Environment Department,

"**designated public place**" means a public place designated under any Ordinance or instrument under this Law,



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

**"instrument under this Law"** includes any regulation, rule, order, code or guidance made or issued under an Ordinance under this Law,

**"motor vehicle"** means a mechanically propelled vehicle intended or adapted for use on a public highway,

**"parking"** includes placing, storing, leaving and abandoning,

**"public highway"** includes any road, street, lane or place to which the public has access whether on foot or with animals or vehicles and whether on payment or otherwise,

**"public place"** includes a public highway and any premises, place or area to which the public have access, whether on payment or otherwise,

**"specified"** means specified by any Ordinance or instrument under this Law,

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

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

**"vehicle"** includes a motor vehicle, a trailer (whether or not attached to a motor vehicle) and a bicycle.

**Citation.**

5. This Law may be cited as the Road Traffic (Parking Fees and Charges) (Enabling Provisions) (Guernsey) Law, 2009.

**Commencement.**

6. This Law shall come into force on the day appointed by Ordinance of the States.

# PROJET DE LOI

ENTITLED

## **Fraud (Bailiwick of Guernsey) Law, 2009**

### ARRANGEMENT OF SECTIONS

#### *Fraud*

1. Fraud.
2. Fraud by false representation.
3. Fraud by failing to disclose information.
4. Fraud by abuse of position.
5. "Gain" and "loss".
6. Possession etc. of articles for use in fraud.
7. Making or supplying articles for use in fraud.
8. "Article".
9. Participating in fraudulent business carried on by sole trader etc.

#### *Obtaining services dishonestly*

10. Obtaining services dishonestly.

#### *Supplementary*

11. Aiding and abetting fraud in another jurisdiction.
12. Liability of officers and members for offences by bodies corporate.
13. Customary or common law offence of fraud.

14. Amendments.
15. Ordinances.
16. Interpretation.
17. Commencement.
18. Citation.

Schedule - Amendments.

# PROJET DE LOI

ENTITLED

## **Fraud (Bailiwick of Guernsey) Law, 2009**

**THE STATES**, in pursuance of their Resolutions of the 31<sup>st</sup> May 2007<sup>a</sup> and the 25<sup>th</sup> February 2009<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.

### *Fraud*

#### **Fraud.**

1. (1) A person is guilty of fraud if he contravenes –
  - (a) section 2 (fraud by false representation),
  - (b) section 3 (fraud by failing to disclose information), or
  - (c) section 4 (fraud by abuse of position).
- (2) A person who is guilty of fraud is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both, or

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<sup>a</sup> Article XIX of Billet d'État No. XIV of 2007.

<sup>b</sup> Article \*\* of Billet d'État No. \*\* of 2009.

- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 years, or to a fine, or to both.

**Fraud by false representation.**

- 2. (1) A person contravenes this section if he –
  - (a) dishonestly makes a false representation, and
  - (b) intends, by making the representation –
    - (i) to make a gain for himself or another, or
    - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A representation is false if –
  - (a) it is untrue or misleading, and
  - (b) the person making it knows that it is, or might be, untrue or misleading.
- (3) For the purposes of this section, a "**representation**" –
  - (a) means any representation as to fact or law, including a representation as to a state of mind of –
    - (i) the person making the representation, or

- (ii) any other person,
- (b) may be express or implied, and
- (c) may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

**Fraud by failing to disclose information.**

3. A person contravenes this section if he –

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- (b) intends, by failing to disclose the information –
  - (i) to make a gain for himself or another, or
  - (ii) to cause loss to another or to expose another to a risk of loss.

**Fraud by abuse of position.**

4. (1) A person contravenes this section if he –

- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,

- (b) dishonestly abuses that position, and
- (c) intends, by means of the abuse of that position –
  - (i) to make a gain for himself or another, or
  - (ii) to cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

**"Gain" and "loss".**

**5.** (1) The references to gain and loss in sections 2 to 4 are to be read in accordance with this section.

(2) The expressions –

- (a) **"gain"** and **"loss"** –
  - (i) extend only to gain or loss in money or other property, and
  - (ii) include any such gain or loss whether temporary or permanent,
- (b) **"property"** means any property whether real or personal (including things in action and other intangible property),



- (c) **"gain"** includes a gain by keeping what one has, as well as a gain by getting what one does not have, and
- (d) **"loss"** includes a loss by not getting what one might get, as well as a loss by parting with what one has.

**Possession etc. of articles for use in fraud.**

6. (1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.

- (2) A person guilty of an offence under this section 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 6 years, or to a fine, or to both.

**Making or supplying articles for use in fraud.**

7. (1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article –

- (a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or
- (b) intending it to be used to commit or assist in the commission of fraud.

- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 years, or to a fine, or to both.

**"Article".**

8. For the purposes of sections 6 and 7, "**article**" includes any program or data held in electronic form.

**Participating in fraudulent business carried on by sole trader etc.**

9. (1) A person is guilty of an offence if he is knowingly a party to the carrying on of a business –

- (a) by a person who is outside the reach of section 432 of the Companies (Guernsey) Law, 2008<sup>c</sup> ("**the Companies Law**"), and
- (b) with intent to defraud creditors of any person or for any other fraudulent purpose.

(2) The following are within the reach of section 432–

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<sup>c</sup> Order in Council No. VIII of 2008 as amended by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008 and the Companies (Guernsey) Law, 2008 (Amendment) (No.2) Ordinance, 2008.

- (a) a company (within the meaning of the Companies Law),
- (b) a person to whom that section applies (with or without adaptations or modifications) as if the person were a company, and
- (c) a person exempted from the application of that section.

(3) For the purposes of this section, "**fraudulent purpose**" has the same meaning as in section 432 of the Companies Law.

- (4) A person guilty of an offence under this section 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 10 years, or to a fine, or to both.

*Obtaining services dishonestly*

**Obtaining services dishonestly.**

**10.** (1) A person is guilty of an offence under this section if he obtains services for himself or another –

- (a) by a dishonest act, and
- (b) in contravention of subsection (2).

(2) A person obtains services in contravention of this subsection if –

(a) they are made available on the basis that payment has been, is being or will be made for or in respect of them,

(b) he obtains them without any payment having been made for or in respect of them or without payment having been made in full, and

(c) when he obtains them, he knows –

(i) that they are being made available, or

(ii) that they might be made available,

on the basis described in paragraph (a) but intends that payment will not be made, or will not be made in full.

(3) A person guilty of an offence under this section is liable –

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

(b) on conviction on indictment, to imprisonment for a term not exceeding 6 years, or to a fine, or to both.

*Supplementary*

**Aiding and abetting fraud in another jurisdiction.**

11. A person ("the secondary party to an offence") who, within the Bailiwick, aids, abets, counsels or procures the commission by another person ("the principal offender") of an offence in another jurisdiction which would be an offence under this Law if committed within the Bailiwick is guilty of that offence under this Law and may be proceeded against and punished accordingly.

**Liability of officers and members for offences by bodies corporate.**

12. (1) Where under this Law an offence –

- (a) is committed by a body corporate, and
- (b) is proved to have been committed with the consent or connivance of –
  - (i) any director, manager, secretary or other similar officer of the body corporate, or
  - (ii) 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.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

**Customary or common law offence of fraud.**

13. Nothing in this Law shall be taken to affect any customary or common law offence of fraud, cheating relating to the public revenue or conspiracy to defraud.

**Amendments.**

14. The Schedule to this Law shall have effect.

**Ordinances.**

15. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(2) Any power to make an Ordinance under this Law 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 class of case for different purposes, and/or
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Interpretation.**

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

"**article**" has the meaning given in section 8,

"**Bailiwick**" means the Bailiwick of Guernsey,

"**the Companies Law**" has the meaning given in section 9(1)(a),

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

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

"**gain**" has the meaning given in section 5,

"**loss**" has the meaning given in section 5,

**"the principal offender"** has the meaning given in section 11,

**"representation"** has the meaning given in section 2(3),

**"the secondary party to the offence"** has the meaning given in section 11,

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

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

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

(3) Unless the context requires otherwise, 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.

### **Commencement.**

**17.** (1) This Law shall come into force on such date as the States may by Ordinance appoint.

(2) An Ordinance under subsection (1) may appoint different dates

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<sup>d</sup> Ordres en Conseil Vol. XXXI, p. 278.

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



for different provisions of this Law and for different purposes.

**Citation.**

**18.** This Law may be cited as the Fraud (Bailiwick of Guernsey) Law, 2009.

## SCHEDULE

Section 14

## AMENDMENTS

The following Laws are amended in the manner indicated -

**Theft Law 1983<sup>f</sup>**

1. For section 15B(3), substitute –

"(3) "Account" means an account kept with –

- (a) a bank;
- (b) a person carrying on a business which falls within subsection (4) below; or
- (c) an issuer of electronic money (as defined for the purposes of the Transfer of Funds (Guernsey) Ordinance, 2007).".

2. For section 15B(5)(b), substitute –

"(b) "money" includes money expressed in a currency other than sterling.".

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<sup>f</sup> Ordres en Conseil Vol. XXVIII, pg. 5 and Order in Council No. XII of 1999.

3. In section 27(4) (meaning of "stolen goods"), immediately after "section fifteen of this Law" insert ", or, subject to subsection (5), by fraud (within the meaning of the Fraud Law)".

4. Immediately after section 27(4), insert the following –

"(5) Subsection (1) applies in relation to goods obtained by fraud as if –

- (a) the reference to the commencement of this Law were a reference to the commencement of the Fraud Law, and
- (b) the reference to an offence under this Law were a reference to an offence under section 1 of that Law."

5. For section 27A(4), substitute –

"(4) A credit to an account is also wrongful to the extent that it derives from –

- (a) theft;
- (b) an offence under section 15A;
- (c) blackmail;
- (d) fraud (contrary to section 1 of the Fraud Law);  
or

(e) stolen goods."

6. In section 42(2) (interpretation), immediately after the definition of "the Bailiwick", insert –

**"the Fraud Law"** means the Fraud (Bailiwick of Guernsey) Law, 2009;"

**Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003<sup>g</sup>**

7. Immediately after section 1(8)(e) (Power of police officer to stop and search persons, vehicles etc.), insert paragraph (f) –

"(f) fraud (contrary to section 1 of the Fraud Law)."

8. In section 91 (interpretation), immediately after the definition of "fingerprints", insert –

**"the Fraud Law"** means the Fraud (Bailiwick of Guernsey) Law, 2009;"

9. In section 91, immediately after paragraph (a) of the definition of "**trigger offence**", insert the following –

"(aa) offences under the following provisions of the Fraud Law –

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<sup>g</sup> Order in Council No. XXIII of 2003.

- (i) section 1 (fraud);
- (ii) section 6 (possession etc. of articles for use in fraud); and
- (iii) section 7 (making or supplying articles for use in fraud);".

**Criminal Justice (Compensation) (Bailiwick of Guernsey) Law 1990<sup>h</sup>.**

10. In section 1(3) and (4) (compensation orders), after "Theft (Bailiwick of Guernsey) Law, 1983" insert "or Fraud (Bailiwick of Guernsey) Law 2009".

**Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law 2006<sup>i</sup>.**

11. Immediately after section 14(2)(a), insert the following paragraph –

"(aa) an offence under the following provisions of the Fraud (Bailiwick of Guernsey) Law, 2009 -

- (i) section 1 (fraud),
- (ii) section 6 (possession etc. of articles for use in fraud),
- (iii) section 7 (making or supplying articles for use in fraud),

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<sup>h</sup> Ordres en Conseil Vol. XXXII, pg. 77.

<sup>i</sup> Order in Council No. XII of 2006.

(iv) section 9 (participating in fraudulent business carried on by sole trader etc),  
or

(v) section 10 (obtaining services dishonestly),".

12. In section 15(1), immediately after "means" insert "(subject to subsection (1A))".

13. Immediately after section 15(1), insert the following subsection –

"(1A) In relation to an offence under section 1 (fraud) of the Fraud (Bailiwick of Guernsey) Law, 2009, "relevant event" includes –

- (a) if the fraud involved an intention to make a gain and the gain occurred, the occurrence, and
- (b) if the fraud involved an intention to cause a loss or to expose another to a risk of loss and the loss occurred, that occurrence."

# PROJET DE LOI

ENTITLED

## **The Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009**

### ARRANGEMENT OF SECTIONS

#### PART I SEXUAL OFFENCES OUTSIDE THE BAILIWICK

##### *Incitement*

1. Incitement to commit certain sexual acts outside the Bailiwick.
2. Section 1 - supplementary.

##### *Jurisdiction*

3. Extension of jurisdiction.

#### PART II SEXUAL OFFENCES AND PROTECTED MATERIAL

##### *Meaning of protected material, etc*

4. Meaning of "protected material".
5. Meaning of other expressions.

##### *Regulation of disclosure to defendant*

6. Regulation of disclosure by Her Majesty's Procureur.
7. Disclosure to defendant's Advocate.
8. Disclosure to unrepresented defendant.
9. Further disclosure by Her Majesty's Procureur.

*Supplementary*

- 10. Offences.
- 11. Application of Part II.

PART III  
INTERPRETATION, AMENDMENT AND CITATION

*Interpretation*

- 12. Interpretation.

*Amendment and citation*

- 13. Power to amend certain provisions of Law by Ordinance.
- 14. Citation.

SCHEDULE: Sexual offences for the purposes of this Law.



# PROJET DE LOI

ENTITLED

## **The Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009**

**THE STATES**, in pursuance of their Resolutions of the 27<sup>th</sup> April, 2006<sup>a</sup> and the 25<sup>th</sup> February, 2009<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

#### SEXUAL OFFENCES OUTSIDE THE BAILIWICK

##### *Incitement*

#### **Incitement to commit certain sexual acts outside the Bailiwick.**

1. (1) This section applies where -
  - (a) any act done by a person in the Bailiwick would amount to the offence of incitement to commit a sexual offence but for the fact that the whole or part of what he had in mind would not take place in the Bailiwick,

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<sup>a</sup> Article XI of Billet d'État No. VIII of 2006.

<sup>b</sup> Article \*\* of Billet d'État No. \*\* of 2009.

- (b) the whole or part of what he had in mind was intended to take place in a country or territory outside the Bailiwick, and
- (c) what he had in mind would involve the commission of an offence under the law in force in that country or territory.

(2) Where this section applies -

- (a) what he had in mind is to be treated as the sexual offence referred to in subsection (1)(a) for the purposes of any charge of incitement brought in respect of that act, and
- (b) any such charge is accordingly triable in the Bailiwick.

(3) Any act done by means of a message (however communicated) is to be treated as done in the Bailiwick if the message is sent or received in the Bailiwick.

**Section 1 - supplementary.**

2. (1) Conduct punishable under the law in force in any country or territory is an offence under that law for the purposes of section 1 however it is described in that law.

(2) Subject to subsection (3), the condition in section 1(1)(c) is to be taken to be met unless, not later than the day determined by the court, the defendant serves on Her Majesty's Procureur a notice -

- (a) stating that, on the facts as alleged with respect to what he had in mind, the condition is not in his opinion met,
- (b) showing his grounds for that opinion, and
- (c) requiring Her Majesty's Procureur to show that it is met.

(3) The court, if it thinks fit, may permit the defendant to require Her Majesty's Procureur to show that the condition is met without service of a notice under subsection (2).

(4) In the Royal Court the question of whether the condition is met is to be decided by the Bailiff alone.

(5) In any proceedings in respect of any offence triable by virtue of section 1, it is immaterial to guilt whether or not the accused was a British citizen at the time of any act or other event proof of which is required for conviction of the offence.

(6) References to an offence of incitement to commit a sexual offence include an offence triable in the Bailiwick as such an incitement by virtue of section 1 (without prejudice to subsection (2) of that section).

(7) Subsection (6) applies to references in any enactment or document except those in section 1 of this Law and in Part II of the Criminal Justice

(Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006<sup>c</sup>.

*Jurisdiction*

**Extension of jurisdiction.**

3. (1) Subject to subsection (2), any act done by a person in a country or territory outside the Bailiwick which -

- (a) constituted an offence under the law in force in that country or territory, and
- (b) would constitute a sexual offence if it had been done in the Bailiwick,

constitutes that sexual offence under the law of the Bailiwick.

(2) Proceedings by virtue of this section may be brought only -

- (a) against a person who is a British citizen or resident in the Bailiwick, and
- (b) in relation to a sexual offence which can be committed against a person irrespective of their age, where the victim of the offence was under 16 at the time of its commission.

(3) An act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of this section,

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<sup>c</sup> Order in Council No. XII of 2006.

however it is described in that law.

(4) Subject to subsection (5), the condition in subsection (1)(a) is to be taken to be met unless, not later than the day determined by the court, the defendant serves on Her Majesty's Procureur a notice -

- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion met,
- (b) showing his grounds for that opinion, and
- (c) requiring Her Majesty's Procureur to show that it is met.

(5) The court, if it thinks fit, may permit the defendant to require Her Majesty's Procureur to show that the condition is met without service of a notice under subsection (4).

(6) In the Royal Court the question of whether the condition is met is to be decided by the Bailiff alone.

## PART II

### SEXUAL OFFENCES AND PROTECTED MATERIAL

#### *Meaning of protected material, etc*

#### **Meaning of "protected material".**

4. (1) In this Part of this Law "**protected material**", in relation to proceedings for a sexual offence, means a copy (in whatever form) of any of the following material -

- (a) a statement relating to that or any other sexual offence made by any victim of the offence (whether the statement is recorded in writing or in any other form),
- (b) a photograph or pseudo-photograph of any such victim, or
- (c) a report of a medical examination of the physical condition of any such victim,

which is a copy given by Her Majesty's Procureur to any person under this Part of this Law.

(2) For the purposes of subsection (1) a person is, in relation to any proceedings for a sexual offence, a victim of that offence if -

- (a) the charge, summons or indictment by which the proceedings are instituted names that person as a person in relation to whom that offence was committed, or
- (b) that offence can, in Her Majesty's Procureur's opinion, be reasonably regarded as having been committed in relation to that person,

and a person is, in relation to any such proceedings, a victim of any other sexual offence if that offence can, in Her Majesty's Procureur's opinion, be reasonably regarded as having been committed in relation to that person.

(3) In this Part of this Law, where the context so permits, and subject to subsection (4) -

- (a) references to protected material include references to any part of any such material, and
- (b) references to a copy of any such material include references to any part of any such copy.

(4) Nothing in this Part of this Law -

- (a) so far as it refers to a defendant making any copy of -
  - (i) any protected material, or
  - (ii) a copy of any such material,

applies to a manuscript copy which is not a verbatim copy of the whole of that material or copy, or

- (b) so far as it refers to a defendant having in his possession any copy of any protected material, applies to a manuscript copy made by him which is not a verbatim copy of the whole of that material.

#### **Meaning of other expressions.**

5. (1) In this Part of this Law, unless the context requires otherwise-

"proceedings" means, subject to subsection (2), criminal proceedings, and

"**relevant proceedings**", in relation to any material which has been disclosed by Her Majesty's Procureur under this Part of this Law, means any proceedings for the purposes of which it has been so disclosed or any further proceedings for the sexual offence in question.

(2) For the purposes of this Part of this Law references to proceedings for a sexual offence include references to -

- (a) any appeal or application for leave to appeal brought or made by or in relation to a defendant in such proceedings, and
- (b) any petition recommending the exercise of Her Majesty's Prerogative of mercy in relation to any such defendant.

(3) In this Part of this Law, in the context of Her Majesty's Procureur giving a copy of any material to any person -

- (a) references to Her Majesty's Procureur include references to a person acting on his behalf, and
- (b) where any such copy falls to be given to the defendant's Advocate, references to the defendant's Advocate include references to a person acting on behalf of the defendant's Advocate.

*Regulation of disclosure to defendant*



**Regulation of disclosure by Her Majesty's Procureur.**

6. (1) Where, in connection with any proceedings for a sexual offence, any statement or other material falling within any of paragraphs (a) to (c) of section 4(1) would (apart from this section) fall to be disclosed by Her Majesty's Procureur to the defendant -

- (a) Her Majesty's Procureur shall not disclose that material to the defendant, and
- (b) it shall instead be disclosed under this Law in accordance with whichever of subsections (2) and (3) is applicable.

(2) If -

- (a) the defendant has an Advocate, and
- (b) the defendant's Advocate gives Her Majesty's Procureur the undertaking required by section 7,

Her Majesty's Procureur shall disclose the material in question by giving a copy of it to the defendant's Advocate.

(3) If subsection (2) is not applicable, Her Majesty's Procureur shall disclose the material in question by giving a copy of it to the appropriate person for the purposes of section 8 in order for that person to show that copy to the defendant under that section.

(4) Where under this Part of this Law a copy of any material falls to be given to any person by Her Majesty's Procureur, any such copy -

- (a) may be in such form as Her Majesty's Procureur thinks fit, and
- (b) where the material consists of information which has been recorded in any form, need not be in the same form as that in which the information has already been recorded.

(5) Once a copy of any material is given to any person under this Part of this Law by Her Majesty's Procureur, the copy shall (in accordance with section 4(1)) be protected material for the purposes of this Law.

**Disclosure to defendant's Advocate.**

7. (1) For the purposes of this Part of this Law the undertaking which a defendant's Advocate is required to give in relation to any protected material given to him under this Part of this Law is an undertaking by him to discharge the obligations set out in subsections (2) to (7).

(2) He must take reasonable steps to ensure -

- (a) that the protected material, or any copy of it, is only shown to the defendant in circumstances where it is possible to exercise adequate supervision to prevent the defendant retaining possession of the material or copy or making a copy of it, and
- (b) that the protected material is not shown and no copy of it is given, and its contents are not otherwise revealed, to any person other than the defendant, except so far

as it appears to him necessary to show the material or give a copy of it to any such person -

- (i) in connection with any relevant proceedings, or
- (ii) for the purposes of any assessment or treatment of the defendant (whether before or after conviction).

(3) He must inform the defendant -

- (a) that the protected material is such material for the purposes of this Law,
- (b) that the defendant can only inspect that material, or any copy of it, in circumstances such as are described in subsection (2)(a), and
- (c) that it would be an offence for the defendant -
  - (i) to have that material, or any copy of it, in his possession otherwise than while inspecting it or the copy in such circumstances, or
  - (ii) to give that material or any copy of it, or otherwise reveal its contents, to any other person.

(4) He must, where the protected material or a copy of it has been shown or given in accordance with subsection (2)(b)(i) or (ii) to a person other

than the defendant, inform that person -

(a) that that person must not give any copy of the material, or otherwise reveal its contents -

(i) to any person other than the defendant, or

(ii) to the defendant otherwise than in circumstances such as are described in subsection (2)(a), and

(b) that it would be an offence for that person to do so.

(5) He must, where he ceases to act as the defendant's Advocate at a time when any relevant proceedings are current or in contemplation -

(a) inform Her Majesty's Procureur of that fact, and

(b) if he is informed by Her Majesty's Procureur that the defendant has a new Advocate who has given Her Majesty's Procureur the undertaking required by this section, give the protected material, and any copies of it in his possession, to the defendant's new Advocate.

(6) He must, at the time of giving the protected material to the new Advocate under subsection (5), inform him -

(a) that the material is protected material for the purposes of this Law, and

(b) of the extent to which -

(i) that material has been shown by him, and

(ii) any copies of it have been given by him,

to any other person (including the defendant).

(7) He must keep a record of every occasion on which the protected material was shown, or a copy of it was given, as mentioned in subsection (6)(b).

**Disclosure to unrepresented defendant.**

8. (1) This section applies where, in accordance with section 6(3), a copy of any material falls to be given by Her Majesty's Procureur to the appropriate person for the purposes of this section in order for that person to show that copy to the defendant under this section.

(2) Subject to subsection (3), the appropriate person in such a case is -

(a) if the defendant is detained in the States Prison, the governor or any person nominated by the governor for the purposes of this section, and

(b) otherwise a police officer of at least the rank of sergeant.

(3) The Home Department may by regulations provide that, in such circumstances as are specified in the regulations, the appropriate person for the

purposes of this section shall be a person of any class or description so specified.

- (4) The appropriate person shall take reasonable steps to ensure -
  - (a) that the protected material, or any copy of it, is only shown to the defendant in circumstances where it is possible to exercise adequate supervision to prevent the defendant retaining possession of the material or copy or making a copy of it,
  - (b) that, subject to paragraph (a), the defendant is given such access to that material, or a copy of it, as he reasonably requires in connection with any relevant proceedings, and
  - (c) that that material is not shown and no copy of it is given, and its contents are not otherwise revealed, to any person other than the defendant.

(5) Her Majesty's Procurer shall, at the time of giving the protected material to the appropriate person, inform him -

- (a) that the material is protected material for the purposes of this Law, and
- (b) that he is required to discharge the obligation set out in subsection (4) in relation to that material.

(6) Her Majesty's Procurer shall at that time also inform the defendant -

- (a) that the material is protected material for the purposes of this Law,
- (b) that the defendant can only inspect that material, or any copy of it, in circumstances such as are described in subsection (4)(a), and
- (c) that it would be an offence for the defendant -
  - (i) to have that material, or any copy of it, in his possession otherwise than while inspecting it or the copy in such circumstances, or
  - (ii) to give that material or any copy of it, or otherwise reveal its contents, to any other person,

as well as informing him of the effect of subsection (7).

(7) If -

- (a) the defendant requests Her Majesty's Procurer in writing to give a further copy of the material mentioned in subsection (1) to some other person, and
- (b) it appears to Her Majesty's Procurer to be necessary to do so -
  - (i) in connection with any relevant proceedings, or

- (ii) for the purposes of any assessment or treatment of the defendant (whether before or after conviction),

Her Majesty's Procureur shall give such a copy to that other person.

(8) Her Majesty's Procureur may give such a copy to some other person where no request has been made under subsection (7) but it appears to him that in the interests of the defendant it is necessary to do so as mentioned in paragraph (b) of that subsection.

(9) Her Majesty's Procureur shall, at the time of giving such a copy to a person under subsection (7) or (8), inform that person -

- (a) that the copy is protected material for the purposes of this Law,
- (b) that he must not give any copy of the protected material or otherwise reveal its contents -
  - (i) to any person other than the defendant, or
  - (ii) to the defendant otherwise than in circumstances such as are described in subsection (4)(a), and
- (c) that it would be an offence for him to do so.

(10) If Her Majesty's Procureur -



- (a) receives a request from the defendant under subsection (7) to give a further copy of the material in question to another person, but
- (b) does not consider it to be necessary to do so as mentioned in paragraph (b) of that subsection and accordingly refuses the request,

he shall inform the defendant of his refusal.

**Further disclosure by Her Majesty's Procureur.**

**9. (1) Where -**

- (a) any material has been disclosed in accordance with section 6(2) to the defendant's Advocate, and
- (b) at a time when any relevant proceedings are current or in contemplation the Advocate -
  - (i) ceases to act as the defendant's Advocate in circumstances where section 7(5)(b) does not apply, or
  - (ii) dies or becomes incapacitated,

that material shall be further disclosed under this Law in accordance with whichever of section 6(2) or (3) is for the time being applicable.

**(2) Where -**

- (a) any material has been disclosed in accordance with section 6(3), and
- (b) at a time when any relevant proceedings are current or in contemplation the defendant acquires an Advocate who gives Her Majesty's Procureur the undertaking required by section 7,

that material shall be further disclosed under this Law, in accordance with section 6(2), to the defendant's Advocate.

*Supplementary*

**Offences.**

**10.** (1) Where any material is disclosed under this Part of this Law in connection with any proceedings for a sexual offence, it is an offence for the defendant -

- (a) to have the protected material, or any copy of it, in his possession otherwise than while inspecting it or the copy in circumstances such as are described in section 7(2)(a) or 8(4)(a), or
- (b) to give that material or any copy of it, or otherwise reveal its contents, to any other person.

(2) Where any protected material, or any copy of any such material, has been shown or given to any person in accordance with section 7(2)(b)(i) or (ii) or section 8(7) or (8), it is an offence for that person to give any

copy of that material or otherwise reveal its contents -

- (a) to any person other than the defendant, or
- (b) to the defendant otherwise than in circumstances such as are described in section 7(2)(a) or 8(4)(a).

(3) Subsections (1) and (2) apply whether or not any relevant proceedings are current or in contemplation (and references to the defendant shall be construed accordingly).

(4) A person guilty of an offence under this section 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,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(5) Where a person is charged with an offence under this section relating to any protected material or copy of any such material, it is 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 material or copy in question was protected material or (as the case may be) a copy of any such material.

(6) The court before which a person is tried for an offence under this section may (whether or not he is convicted of that offence) make an order requiring him to return any protected material, or any copy of any such material, in his possession to Her Majesty's Procureur.

- (7) Nothing in subsection (1) or (2) shall be taken to apply to -
- (a) any disclosure made in the course of any proceedings before a court or in any report of any such proceedings, or
  - (b) any disclosure made or copy given by a person when returning any protected material, or a copy of any such material, to Her Majesty's Procureur or the defendant's Advocate,

and accordingly nothing in section 7 or 8 shall be read as precluding the making of any disclosure or the giving of any copy in circumstances falling within paragraph (a) or (as the case may be) paragraph (b) of this subsection.

### **Application of Part II.**

11. Nothing in this Part of this Law applies to any proceedings for a sexual offence where the defendant was charged with the offence before the date of commencement of this Part of this Law.

## **PART III**

### **INTERPRETATION, AMENDMENT AND CITATION**

#### *Interpretation*

### **Interpretation.**

12. (1) In this Law -

"**Bailiwick**" means the Bailiwick of Guernsey,

"**defendant**", in Part II, and in relation to any proceedings for a sexual offence, means any person charged with that offence, whether or not he has been convicted,

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

"**Her Majesty's Procureur**" includes Her Majesty's Comptroller and any person acting as prosecutor (and see section 5(3)),

"**inform**" means inform in writing,

"**photograph**" and "**pseudo-photograph**" shall be construed in accordance with section 9 of the Protection of Children (Bailiwick of Guernsey) Law, 1985<sup>d</sup>,

"**proceedings**" and "**relevant proceedings**" : see section 5,

"**protected material**" : see section 4,

"**sexual offence**" means an offence listed in the Schedule,

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

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law,

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<sup>d</sup> Ordres en Conseil Vol. XXIX, p. 103; amended by No. I of 2003.

1989<sup>e</sup>.

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

(3) 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.

*Amendment and citation*

**Power to amend certain provisions of Law by Ordinance.**

13. (1) The States may by Ordinance amend -

- (a) section 3 so as to amend the meaning of the expression "protected material",
- (b) section 12(1) so as to amend the meaning of any expression defined therein or to define any other expression, and
- (c) the Schedule so as to amend the list of offences that are sexual offences,

where they consider it necessary or expedient to do so for the purpose of -

- (i) enhancing or protecting the reputation of the

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<sup>e</sup> Ordres en Conseil Vol. XXXI, p. 278.

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

Bailiwick and its criminal justice system,

- (ii) improving or enhancing the investigation, prevention or detection of crime,
- (iii) facilitating the instigation of, or otherwise for the purposes of, criminal proceedings,
- (iv) discharging any international obligation to which the Bailiwick is subject, or
- (v) assisting, in the interests of the public or otherwise, any authority which appears to the States to exercise in a place outside the Bailiwick functions corresponding to any of the functions of Her Majesty's Procureur or the police under or by virtue of this Law.

(2) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(3) Any power conferred by this Law to make an Ordinance 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**

**14.** This Law may be cited as the Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009.



# SCHEDULE

Section 11(1)

## SEXUAL OFFENCES FOR THE PURPOSES OF THIS LAW

The offences that are "**sexual offences**" for the purposes of this Law are -

- (a) rape,
- (b) indecent assault,
- (c) an offence under the Law entitled "Loi pour la Punition d’Inceste, 1909"<sup>g</sup>,
- (d) an offence under the Law entitled "Loi relative à la Protection des Femmes et des Filles Mineures, 1914"<sup>h</sup>,
- (e) an offence under Articles 11 and 12 of the Law entitled "Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes, 1917"<sup>i</sup>,
- (f) an offence under the Law entitled "Loi relative à la Sodomie, 1929"<sup>j</sup>,
- (g) an offence under the Protection of Children (Bailiwick of Guernsey)

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

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

<sup>i</sup> Ordres en Conseil Vol. V, p 342.

<sup>j</sup> Ordres en Conseil Vol. VIII, p. 273.

Law, 1985<sup>k</sup>,

- (h) an offence of conspiracy to commit any of the offences in paragraphs (a) to (g),
- (i) an offence of attempting to commit any of those offences,
- (j) an offence of inciting another to commit any of those offences, and
- (k) an offence of aiding, abetting, counselling or procuring any of those offences.

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<sup>k</sup> Ordres en Conseil Vol. XXIX, p. 103.

# PROJET DE LOI

ENTITLED

## **The Education (Guernsey) (Amendment) Law, 2009**

**THE STATES**, in pursuance of their Resolutions of the 25<sup>th</sup> April 2001<sup>a</sup>, 2<sup>nd</sup> November, 2007<sup>b</sup> and 25th February 2009<sup>c</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 Island of Guernsey.

### **Amendment of Law of 1970.**

1. The Education (Guernsey) Law, 1970<sup>d</sup> ("**the Law**") is further amended as follows.

2. In section 1(1) of the Law (interpretation) -

(a) after the definition of "**committee of management**",  
insert -

"**company**" means a body corporate, of whatever description, incorporated with or without limited liability in any part

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<sup>a</sup> Billet d'État No. VII of 2001.

<sup>b</sup> Article XI of Billet d'État No. XXII of 2007.

<sup>c</sup> Article \* of Billet d'État No. \*\* of 2009.

<sup>d</sup> Ordres en Conseil Vol XXII, p.318; Vol. XXVI, p. 107, Vol. XXVII, p. 347; Vol. XXVIII, p. 181; Vol. XXX, p. 179; Vol. XXXI, p. 168 and Vol. XXXII, p. 144 and the Education (Compulsory School Age) (Guernsey) Ordinance, 2008, approved by resolution of the States on 28<sup>th</sup> May, 2008.

of the world, ",

(b) after the definition of "**the Council**" insert -

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

(c) after the definition of "**special educational needs**" and "**special educational provision**" insert -

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect, ".

3. In section 16 of the Law (compulsory school age) -

(a) for subsections (3) and (4) substitute -

"(3) Any person who -

(a) attains an age which is the upper limit of the compulsory school age at any time from the beginning of a school year up to and including the last Friday in June in that school year, shall be deemed not to have attained that age until the end of that last Friday in June, or

(b) is to attain an age which is the upper limit of the compulsory school age at any time after the last Friday in June in a school year but before

the beginning of the school year next following, shall be deemed to have attained that age at the end of that last Friday in June.

(4) In subsection (3) "**school year**" means the period beginning on 1<sup>st</sup> September in any year and ending at the end of the 31<sup>st</sup> August next following.", and

(b) in the proviso at the end of the section, for the words "paragraph (c)" substitute " paragraph (b)".

4. In section 23 of the Law (general duties of the Council with respect to further education), in paragraph (a) for the words "vocational and industrial training" substitute ", without limitation, vocational, social, physical, recreational and industrial training".

5. For section 49 of the Law (power of the Council to give financial assistance in respect of children attending schools and students attending institutions of further education) substitute -

**"Power of the Council to give financial assistance in respect of children attending schools and students attending institutions of further education.**

49. (1) The Council may, in accordance with such conditions as the Council may from time to time determine and subject to such conditions as the States may from time to time by Resolution prescribe, for the purpose of enabling pupils to take advantage of any educational facilities available to them -

(a) defray such expenses of children attending any school maintained by the States as may be

necessary to enable them to take part in any school activities, or

- (b) pay the whole or any part of the fees and expenses payable in respect of pupils attending schools at which fees are payable.

(2) The Council may for the purpose of enabling persons to take advantage of any educational facilities available to them and subject to subsection (4) -

- (a) make loans, grants or allowances, pursuant to any arrangements made under paragraph (b) or otherwise, in respect of persons pursuing -
  - (i) a course of education at a university, university college, or other similar institution,
  - (ii) a course of training as a teacher,
  - (iii) a course at any other place of further education, or
  - (iv) a distance learning course in a subject of further education,
- (b) make and establish such arrangements as it thinks fit for the making of loans, grants or allowances to the persons specified in

paragraph (a) including, without limitation -

- (i) establishing, incorporating, dealing with, dissolving and winding up companies through which loans, grants or allowances made under paragraph (a) may be made or administered,
- (ii) entering into arrangements of any kind with any third party in relation to any such arrangements, and
- (iii) taking such steps as the Council considers necessary or expedient to allow a company through which the loans, grants or allowances are made or administered to effectively carry on such business including, without limitation, such steps as are necessary or expedient to enable such a company to manage or administer any loans or the portfolio of its business.

(3) Such provision as the Council considers necessary or expedient may be prescribed in relation to the making of loans, grants or allowances under subsection (2) including -

- (a) the matters in respect of which a loan, grant or allowance is available,

- (b) the amount of loan, grant or allowance available and the conditions subject to which they are made,
- (c) the courses in respect of which a loan, grant or allowance is available, and
- (d) the persons eligible for such loans, grants or allowances.

(4) The Council must exercise its powers under subsection

(2) -

- (a) in accordance with such conditions as the Council may from time to time determine,
- (b) in accordance with such provisions as may be prescribed under subsection (3), and
- (c) subject to such conditions as the States may from time to time by Resolution prescribe.

(5) The States may by Ordinance make such provision as they consider appropriate for appeals to be brought against decisions of the Council under subsection (2) in relation to the making of loans, grants or allowances including provision as to -

- (a) the decisions that may be appealed,
- (b) the persons who may bring such appeals,



- (c) the person to whom such an appeal is to be made,
- (d) the grounds of appeal, and
- (e) the procedure to be adopted for such appeals."

**6.** For section 57(2) of the Law (variation or revocation of orders or directions) substitute -

"(2) Any regulations or orders made, or directions given, under this Law -

- (a) may be amended or revoked by subsequent regulations, orders or directions, as the case may be, made or given, hereunder, and
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to be necessary or expedient.

(3) Any power conferred by this Law to make regulations or orders, or give directions, 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, order or direction, as the case may be."

7. After section 57 of the Law (provisions as to regulations, orders and directions under this law), insert -

**"General provisions as to Ordinances under this Law.**

**57A.** (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
- (b) may contain such consequential, incidental,

supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(2) Any power conferred by this Law to make an Ordinance 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 case,
- (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 classes of cases, or different provisions for the same case or class of case for different purposes, and
  - (iii) any such provision either unconditionally or subject to any

prescribed conditions."

**Interpretation.**

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

**Citation.**

9. This Law may be cited as the Education (Guernsey) (Amendment) Law, 2009.

**Commencement.**

10. This Law shall come into force on the day appointed by order of the States of Guernsey Education Department and different dates may be appointed for different provisions of this Law and for different purposes.

# PROJET DE LOI

ENTITLED

## **The Court of Chief Pleas (Guernsey) (Amendment) Law, 2009**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> January, 2009<sup>a</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 Islands of Guernsey, Herm and Jethou.

### **Amendment of section 5 of the Law of 2004.**

1. In section 5 of the Court of Chief Pleas (Guernsey) Law, 2004<sup>b</sup>, immediately after "29<sup>th</sup> September" in the definition of "Michaelmas sitting", insert "or on such other day as the Royal Court may be order determine".

### **Citation.**

2. This Law may be cited as the Court of Chief Pleas (Guernsey) (Amendment) Law, 2009.

### **Commencement.**

3. This Law shall come into force on the date of its registration on the Records of the Island of Guernsey.

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<sup>a</sup> Article \*\* of Billet d'État No. \*\* of 2009.

<sup>b</sup> Order in Council No. XVII of 2004.

**The Administrator of Income Tax**  
**(Transfer of Functions)**  
**(Guernsey) Ordinance, 2009**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> September, 2008<sup>a</sup>, and in exercise of the powers conferred on them by sections 2 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

**Amendment of statutory references to Administrator of Income Tax.**

1. For any reference in a relevant enactment to the Administrator of Income Tax or the Assistant Administrator of Income Tax, however expressed, there is substituted a reference to the Director of Income Tax or (as the case may be) the Deputy Director of Income Tax.

**Savings and transitional provisions.**

2. Anything done before the date of commencement of this Ordinance or in the process of being done on that date by or in relation to the Administrator of Income Tax or the Assistant Administrator of Income Tax under or by virtue of a relevant enactment shall have effect as if done or (as the case may be) may be continued by or in relation to the Director of Income Tax or (as the case may be) the Deputy Director of Income Tax.

**Subordinate legislation.**

3. The provisions of sections 1 and 2 also apply in relation to any subordinate legislation made or having effect as if made under a relevant enactment

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<sup>a</sup> Article VI of Billet d'État No. XII of 2008.

<sup>b</sup> Ordres en Conseil Vol. XXXIII, p. 479.

as they apply to a relevant enactment; and the provisions of the relevant enactment under which the subordinate legislation was made are varied insofar as is necessary to give effect to this section.

**Interpretation.**

4. In this Ordinance -

"**Administrator of Income Tax**" means the Administrator referred to in section 205 of the Income Tax (Guernsey) Law, 1975<sup>c</sup>,

"**Assistant Administrator of Income Tax**" means the Assistant Administrator of Income Tax referred to in section 205 of the Income Tax (Guernsey) Law, 1975,

"**relevant enactment**" means -

- (a) any Law,
- (b) any Act of Parliament extended to the Bailiwick, and
- (c) any Ordinance of the States,

as amended, repealed and re-enacted (with or without modification), extended or applied,

"**subordinate legislation**" means any statutory instrument, regulation, rule, order, byelaw, scheme, code and other subordinate

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<sup>c</sup> Order in Council Vol. XXV, p. 124; section 205 was amended by No. XVII of 2005.

instrument of a legislative nature.

**Citation.**

**5.** This Ordinance may be cited as the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009.

**Commencement.**

**6.** This Ordinance shall come into force on the 25<sup>th</sup> February, 2009.



## **The Land Planning and Development (Commencement, Transitional Provisions and Savings (Plans)) Ordinance, 2009**

**THE STATES** in exercise of the powers conferred on them by sections 89 and 96 of the Land Planning and Development (Guernsey) Law, 2005<sup>a</sup> hereby order:-

### **Application of this Ordinance.**

1. The following provisions of this Ordinance shall apply notwithstanding section 93 of the Law.

### **Commencement of section 7(2) of the Law-outline planning briefs deemed to be local planning briefs.**

2. Notwithstanding the commencement of the Law by section 15 of the Land Planning and Development (Fees and Commencement) Ordinance, 2008<sup>b</sup> with effect from 6th April, 2009, section 7(2) of the Law, insofar as it applies to paragraph 5 of Part II of Schedule 1 to the Law, shall not come into force unless and until it is commenced in relation to that paragraph by further Ordinance under section 96 of the Law.

### **Savings and Transitional Provisions-Plans or alterations or additions thereto.**

3. (1) Where the Department has requested the Policy Council, before 6th April, 2009, to appoint a person to be an inspector to hold a planning inquiry to consider a Detailed Development Plan, or any proposal for an alteration

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<sup>a</sup> Order in Council No. XVI of 2005 as amended by Ordinances Nos. XXI, XXII, XXV, XXVII and XXVIII of 2007.

<sup>b</sup> Approved by the States on the 26th November, 2008.

or addition to such a plan, under section 9(1) of the Island Development Law<sup>c</sup>, the provisions of the Island Development Law shall apply in relation to the consideration and approval of, or the alteration or addition to, such a plan as if the Island Development Law had not been repealed and as if the Law were not in force.

(2) Where a replacement Detailed Development Plan, or an alteration or addition to such a plan, is approved by resolution of the States under section 13 of the Island Development Law, as saved by subsection (1), on or after 6th April, 2009 -

(a) any such replacement Detailed Development Plan shall be deemed to be a Development Plan for the purposes of the Law as from the date of that approval,

(b) any Detailed Development Plan -

(i) to which such an alternation or addition is made, and

(ii) which is deemed to be a Development Plan by virtue of section 7 of the Law<sup>d</sup>,

shall have effect as so altered or added to as from the date of that approval.

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<sup>c</sup> Ordres en Conseil Vol. XX, p. 276 as amended by Vol. XXII, p. 573, Vol. XXIII, p. 231, Vol. XXXI, p. 61, Vol. XXXII, p.33.

<sup>d</sup> Section 7 of the Law is also applied by section 6 of the Land Planning and Development (Guernsey) Law, 2005 (Savings and Transitional Provisions) Ordinance, 2007 (No. XXX of 2007) and section 19 of the Land Planning and Development (Plans) Ordinance, 2007 (No. XXII of 2007).

**Interpretation.**

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

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

"**Development Plan**" means a current adopted Plan prepared pursuant to sections 8 and 11 of the Law including any current adopted amendment thereto,

"**Island Development Law**" means the Island Development (Guernsey) Law, 1966,

"**the Law**" means the Land Planning and Development (Guernsey) Law, 2005, and

"**Policy Council**" means the States of Guernsey Policy Council.

(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), extended or applied.

**Citation and commencement.**

5. This Ordinance may be cited as the Land Planning and Development (Commencement, Transitional Provisions and Savings (Plans)) Ordinance, 2009 and shall come into force on the 6th April, 2009.

**The Banking Supervision (Bailiwick of Guernsey)  
(Amendment) (No.2) Law, 2008, (Commencement)  
Ordinance, 2009**

**THE STATES**, in exercise of the powers conferred on them by section 10 of the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2008<sup>a</sup>, hereby order:-

**Commencement of Law of 2008.**

1. The Banking Supervision (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2008 shall come into force on the 25<sup>th</sup> February 2009.

**Citation.**

2. This Ordinance may be cited as the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2008 (Commencement) Ordinance, 2009.

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<sup>a</sup> Approved by the States of Deliberation on the 30<sup>th</sup> July 2008.

**The Preferred Debts, Désastre Proceedings and  
Miscellaneous Provisions (Guernsey and Alderney)  
Law, 2006 (Commencement) Ordinance, 2009**

**THE STATES**, in exercise of the powers conferred on them by section 14 of the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006<sup>a</sup>, hereby order:-

**Commencement of Law.**

1. The Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006 shall come into force on the 25<sup>th</sup> February, 2009.

**Citation.**

2. This Ordinance may be cited as the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006 (Commencement) Ordinance, 2009.

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<sup>a</sup> Order in Council No. XIV of 2008.

**The Children (Guernsey and Alderney) Law, 2008  
(Amendment) Ordinance, 2009**

**THE STATES LEGISLATION SELECT COMMITTEE**, in exercise of the power conferred on the States by section 119(1) of the Children (Guernsey and Alderney) Law, 2008 and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>a</sup> and in pursuance of the States Resolution of the 28<sup>th</sup> October, 2004<sup>b</sup>, hereby orders:-

**Substitution of section 119(1) of Law of 2008.**

1. For section 119(1) of the Law of 2008 substitute -

"(1) The States may by Ordinance -

- (a) amend Part VI, Part VII, Part XI, Part XII or Part XVI, where it appears to the States to be necessary or expedient to do so for the purpose of -

- (i) protecting children from harm,
- (ii) promoting their proper and adequate health, welfare and development,
- (iii) ensuring the most beneficial and effective use, or application, of the child

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<sup>a</sup> Ordres en Conseil Vol. XIII, p. 288.

<sup>b</sup> Article XVII of Billet d'État No. XVII of 2004.

welfare principles,

(iv) facilitating the fair and efficient carrying out of the functions of -

(A) the Children's Convenor,

(B) the Board,

(C) the Office of the President,

(D) the office of the deputy President of the Tribunal

(E) the Tribunal, or

(F) the Safeguarder Service, or

(v) discharging any international obligation to which Guernsey or Alderney is subject, and

(b) make such additional provision as they think fit for the purposes of carrying this Law into effect."

**Amendment of section 120 of Law of 2008.**

2. In section 120 of the Law of 2008 -

(a) for subsection (1)(a)(i), substitute -

"(i) subject to subsection (4), create new

liabilities, obligations, penalties and offences, and", and

(b) immediately after subsection (3), insert –

"(4) The power conferred by virtue of subsection (1)(a)(i) shall not include power –

(a) to provide for offences to be triable only on indictment,

(b) to authorise the imposition, on summary conviction of any offence, of any term of imprisonment or of a fine exceeding the limits of jurisdiction imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or

(c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years."

### **Interpretation.**

3. (1) In this Ordinance, "**the Law of 2008**" means the Children (Guernsey and Alderney) Law, 2008.

(2) The provisions of the Interpretation (Guernsey) Law, 1948<sup>c</sup> apply to the interpretation of this Ordinance.

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



**Citation.**

4. This Ordinance may be cited as the Children (Guernsey and Alderney) Law, 2008 (Amendment) Ordinance, 2009.

**Commencement.**

5. This Ordinance shall come into force on the same day as section 119 of the Law of 2008 comes into force.