

# BILLET D'ÉTAT No. I, 2010

27<sup>th</sup> January 2010

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# PROJET DE LOI

ENTITLED

## **The Income Tax (Guernsey) (Amendment) Law, 2010**

**THE STATES**, in pursuance of their Resolution of the 30<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 and Herm.

### **Amendment of 1975 Law.**

1. The Income Tax (Guernsey) Law, 1975, as amended<sup>b</sup>, is further amended as follows.

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<sup>a</sup> Article XII of Billet d'État No. II of 2009.

<sup>b</sup> Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; No. XXI of 2007; the Income Tax (Zero 10) (Guernsey) Law, 2007; the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007; the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008; the Income Tax (Guernsey) (Amendment) Law, 2008; the Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009; the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009; and the Income Tax (Guernsey) (Amendment) Law, 2009; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII) and the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009.

2. In section 5F<sup>c</sup> -

- (a) the existing text is numbered as subsection (1), and
- (b) after subsection (1), as so numbered, insert the following subsections -

"(2) Notwithstanding the provisions of subsection (1)(b), a relevant individual in respect of whom the Director of Income Tax is satisfied as to the matters set out in subsection (3) is liable, in respect of any year of charge, to pay tax only -

- (a) on his income arising or accruing in Guernsey in that year of charge, and
- (b) on any amount of income not so arising or accruing brought into or received by him in Guernsey in that year of charge; and for the purposes of this section any amount not so arising or accruing and brought into or received by him in Guernsey in that year of charge shall be presumed to be income unless he can establish otherwise to the satisfaction of the Director of Income Tax.

- (3) The matters are -

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<sup>c</sup> Section 5F was inserted by the Income Tax (Guernsey) (Amendment) Law, 2009.

- (a) all the income of the relevant individual arising or accruing in Guernsey in that year of charge, other than any interest arising in Guernsey upon money deposited with a licensed institution or other person exempted from the requirement to be licensed under the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 -
  - (i) is income of Class 2(1)(b), and
  - (ii) is subject to the deduction of tax under section 81A,
- (b) the sole or main purpose for the relevant individual being present in Guernsey in that year of charge is in order that he may undertake the duties of an employment, and
- (c) the relevant individual has delivered a return as to his income in accordance with section 68 on the basis of -
  - (i) his total income arising or accruing in Guernsey in that year of charge, and
  - (ii) any amount of income not so arising or accruing brought into or received by him in Guernsey in that year of charge,

which return may be delivered instead of the return required by subsection (1)(a).".

**Citation.**

3. This Law may be cited as the Income Tax (Guernsey) (Amendment) Law, 2010.

**Commencement.**

4. This Law shall have effect, by virtue of the States' resolution of the 27<sup>th</sup> January, 2010<sup>d</sup>, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992<sup>e</sup>, in respect of any year of charge after 2009 (but subject to the transitional provisions set out in section 5I of the Income Tax (Guernsey) Law, 1975), as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

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

<sup>e</sup> Order in Council No. XI of 1992.

## PROJET DE LOI

ENTITLED

### **The Control of Trade in Endangered Species (Enabling Provisions) (Bailiwick of Guernsey) Law, 2010**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> day of April, 2006<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 Bailiwick of Guernsey.

#### **General power to make Ordinances regulating trade, etc, in wild fauna and flora.**

1. The States may by Ordinance make such provision as they think fit -
  - (a) to protect species of wild fauna and flora by regulating trade, taking, possession and transport thereof, and
  - (b) to implement the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora<sup>b</sup> ("**the Convention**").

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

<sup>b</sup> Signed at Washington DC on the 3<sup>rd</sup> March 1973; the United Kingdom ratified the Convention on the 2<sup>nd</sup> August 1976, and it came into force on the 31<sup>st</sup> October 1976.

**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 regulation of imports, exports and re-exports of specimens of such species of fauna and flora as may be specified, by way of permits and certificates issued by the Department, including, without limitation, provision as to -

(i) the classification of species by reference to Council Regulation (EC) No. 338/97 of the 9<sup>th</sup> December 1996 on the protection of species of wild fauna and flora by regulating trade therein and its Annexes, and such other Regulations as may be specified,

(ii) the criteria of which the Department is to be satisfied, and the requirements which the importer or exporter or re-exporter is to fulfil (including the provision of evidence of such matters as may be specified and, in the case of imports, the prior presentation of export and re-export permits and certificates issued by the exporting state) before such a permit or certificate may be issued.

The criteria and requirements mentioned above may differ by reference to such factors as may be specified, including the species or class of

species of the specimen, whether the specimen is live, whether it was born and bred in captivity, whether it has been introduced from the sea and in the case of a dead specimen or parts thereof, whether it is antique, and whether it comprises or forms part of personal or household effects,

- (iii) the specification of ports of entry as being the only such ports into and from which the import and export and re-export of specimens of classified species is to be permitted,
- (iv) the presentation of documentation and specimens for examination at ports of entry or elsewhere prior to the import or export or re-export concerned,
- (v) the identification and marking of specimens of classified species,
- (vi) the import of specimens of classified species from, or the export or re-export to, a state that is not a party to the Convention,
- (vii) the regulation of the movement within the Bailiwick of Guernsey of specimens of classified species by way of certificates issued by the Department or any other specified department,



- (viii) the form of the documentation relating to such imports, exports, re-exports and movements, including the issue, amendment, suspension and cancellation of permits and certificates, and the issue of permits and certificates subject to conditions,
  - (ix) appeals against refusals to issue a permit or certificate, and against decisions to issue a permit or certificate subject to conditions or to cancel a permit or certificate, and the establishment of a tribunal to hear and determine such appeals,
- (b) the designation of the Department as the Management Authority, and the designation of one or more Scientific Authorities, for the purposes of Article IX of the Convention,
- (c) the control of commercial activities relating to specified species, including the prohibition of the purchase, sale or use for commercial gain of specimens of classified species,
- (d) the prohibition of the ownership or possession of specimens of classified species,
- (e) the exchange of specimens of classified species between scientific institutions, including the

registration of scientific institutions for this purpose,

- (f) the prohibition of the organisation or other facilitation of trade in or movement of specimens of classified species outside the Bailiwick of Guernsey,
- (g) the levying of fees or charges,
- (h) the actions and measures that may be taken by any specified person, or court, to ensure compliance with the above regulations, controls and prohibitions,
- (i) the disposal of specimens of classified species condemned or deemed to have been condemned as forfeited,
- (j) the penalties, remedies and sanctions (civil or criminal) which may be imposed for breach of any Ordinance, and
- (k) the courts and persons which, or who, may impose or grant any such penalties, remedies or sanctions.

**General provisions as to Ordinances.**

**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 and may (for the avoidance of doubt) specify penalties which may be imposed by the courts,
- (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,
- (e) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1,
- (f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and

- (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.

(4) The power conferred by subsection (3)(a) to create offences and specify penalties does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to 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<sup>c</sup>, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding five years.

(5) The Department (and any other department of the States) shall, before recommending the States to agree to make an Ordinance under this Law, consult the General Purposes and Advisory Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to

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<sup>c</sup> Order in Council No. XVIII of 2009.

the terms of the proposed Ordinance; but a failure to comply with this subsection shall not invalidate any Ordinance made under this Law.

(6) An Ordinance made under this Law does not have effect in Alderney or Sark unless approved by the States of Alderney or (as the case may be) the Chief Pleas of Sark.

(7) For the purposes of subsection (6) –

(a) an Ordinance shall be deemed to have been approved by the States of Alderney on the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless within that period the States of Alderney resolve to disapprove its application to Alderney, and

(b) an Ordinance shall be deemed to have been approved by the Chief Pleas of Sark at the close of the second meeting of Chief Pleas following the day of its approval by the States of Deliberation, unless Chief Pleas resolve to disapprove its application to Sark either at that meeting, or at the meeting immediately preceding that meeting.

**Interpretation.**

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

"**the Convention**" has the meaning assigned to it in section 1(b),

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

States of Guernsey, States of Alderney or Chief Pleas of Sark, however styled,

**"the Department"** means the States of Guernsey Commerce and Employment Department,

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

**"implementation"**, in relation to the Convention, includes the enforcement or enactment, and the securing of the administration, execution, recognition, exercise or enjoyment, in or under domestic law -

(a) of the Convention, and

(b) of any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the Convention,

**"species"** means any species, sub-species, or geographically separate population thereof;

**"specimen"** means:

(a) any animal or plant, whether alive or dead;

(b) in the case of an animal: for species included in Appendices I and II of the Convention, any readily recognizable part or derivative thereof; and for species included in Appendix III of the Convention, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and

- (c) in the case of a plant: for species included in Appendix I of the Convention, any readily recognizable part or derivative thereof; and for species included in Appendices II and III of the Convention, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species, and

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

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

(3) References in this Law to the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark are references to the committees of those islands for the time being performing the functions respectively conferred by this Law on those said Committees.

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

#### **Citation.**

5. This Law may be cited as the Control of Trade in Endangered Species (Enabling Provisions) (Bailiwick of Guernsey) Law, 2010.

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



**Commencement.**

6. This Law shall come into force on the day of its registration on the Records of the Island of Guernsey.

## PROJET DE LOI

ENTITLED

### **The Bethanie Chapel (Guernsey) Law, 2010**

WHEREAS by a Conveyance registered on the Records of this Island on the 12<sup>th</sup> May 1827 ("**the Conveyance**") Thomas Nant and Marie Nant (née Le Tissier), his wife, transferred to certain *sequestres* (or trustees) premises at La Fosse, St Martin on which there was erected Bethanie Chapel ("**the Chapel Premises**");

WHEREAS the Chapel Premises were directed to be exclusively held for the worship and use of the Church of Dissident (or Dissenting) Protestants called "Particular or Calvinistic Baptists", and not for the use of any other faith, and the Chapel Premises remain so held and used to this day;

WHEREAS a condition of the Conveyance was that if worship were not practised in the Chapel Premises for the lack of a competent priest duly recognised or for the lack of necessary funds, they should be sold and the proceeds applied for the benefit and use of the "Particular or Calvinistic Baptists" as decided by the members (or the congregation for the time being), but the *sequestres* could not themselves sell the Chapel Premises without the consent of the members;

WHEREAS a condition of the Conveyance was that there should always be 8 *sequestres*, and as the original *sequestres* died or ceased to act they were replaced by the members' appointees who took title to the Chapel Premises on the original terms and conditions by documentation registered at the Greffe;

WHEREAS however the last document recording a change of *sequestres*

was registered on the 8<sup>th</sup> August 1947 and the *sequestres* therein named have since died or ceased to act without being formally replaced and without appropriate documentation being prepared and registered;

WHEREAS therefore title to the Chapel Premises now vests in the heirs of the last registered *sequestres* and will continue so to vest unless and until title is regularised by procuring those heirs (whom it may prove difficult, expensive and inconvenient to identify and locate) to execute and register documentation recording the appointment of eight new *sequestres* or unless and until rectifying legislation as described in the next recital is enacted;

WHEREAS therefore in order to avoid such difficulty, expense and inconvenience and in order to avoid the need for the preparation and registration of documentation to reflect future changes of *sequestres* it is proposed that the Chapel Premises should be vested by an Order in Council in a charitable Guernsey company limited by guarantee to be called Bethanie Properties LBG to hold the Chapel Premises on the same terms and conditions as the original and subsequent *sequestres* under the Conveyance (subject as mentioned below);

WHEREAS on the 22<sup>nd</sup> April 2008, at a duly convened meeting of a majority of the members of Bethanie Chapel, the incorporation of Bethanie Properties LBG was approved for the purpose of holding the Chapel Premises in accordance with the proposed Order in Council, and the draft memorandum and articles of the company were considered and approved by the members;

WHEREAS Bethanie Properties LBG should have power to sell the Chapel Premises not only if worship is not practised in the Chapel Premises for the lack of a competent priest duly recognised or for the lack of necessary funds but also if the particular faith of the "Particular or Calvinistic Baptists" cannot be carried on there for any reason;

WHEREAS in the event of a sale of the Chapel Premises the power to direct the application of the proceeds of sale should be vested in -

- (a) the members, or
- (b) in the event any failure of the members (for example, by reason of there being no members), Bethanie Properties LBG, or
- (c) in default of any determination by that company, the Baptist Union of Great Britain or its successor,

subject to the proceeds always remaining available for the benefit and use of "Particular or Calvinistic Baptists" or for Baptist religious purposes; and

WHEREAS any subsisting and enforceable rentes, encumbrances and servitudes in respect of the Chapel Premises would remain unaffected by the proposed transfer, and any subsisting personal obligations and liabilities of the present owners, being the heirs of the last *sequestres*, would be extinguished but would be enforceable against Bethanie Properties LBG as the new owner;

**NOW THEREFORE THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> September, 2008<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 Island of Guernsey.

**Vesting of Chapel Premises.**

1. The Chapel Premises are transferred to and shall vest in Bethanie Properties LBG upon trust to keep, repair and maintain the Chapel Premises and to hold them exclusively for the worship and use of the Church of Dissident (or Dissenting) Protestants called "Particular or Calvinistic Baptists".

**Power of sale of Chapel Premises.**

2. Bethanie Properties LBG has power to sell the Chapel Premises -

- (a) in the circumstances specified in the Conveyance (that is, if worship is not practised in the Chapel Premises for the lack of a competent priest duly recognised or for the lack of necessary funds), or
- (b) if the particular faith of the "Particular or Calvinistic Baptists" cannot be carried on there for any reason.

**Application of proceeds of sale**

3. In the event of a sale of the Chapel Premises the power to direct the application of the proceeds of sale shall vest in -

- (a) the members, or

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

- (b) in the event any failure of the members (for example, by reason of there being no members), Bethanie Properties LBG, or
- (c) in default of any determination by that company, the Baptist Union of Great Britain or its successor,

subject to the proceeds always remaining available for the benefit and use of "Particular or Calvinistic Baptists" or for Baptist religious purposes.

**Continuation of certain rentes, servitudes, etc.**

4. For the avoidance of doubt all rentes, encumbrances and servitudes subsisting and enforceable at the date of commencement of this Law in respect of the Chapel Premises shall continue to subsist and be enforceable.

**Extinction and transfer of personal liabilities.**

5. All rights, obligations and liabilities subsisting in respect of the Chapel Premises on the date of commencement of this Law and enforceable against the persons in whom, immediately before that date, the Chapel Premises were vested shall, on that date, be transferred to and enforceable against Bethanie Properties LBG and shall thereby be extinguished as against those persons.

**Interpretation.**

6. In this Law -

"the Chapel Premises" means the premises at La Fosse, St Martin on which there was erected Bethanie Chapel, transferred to certain *sequestres* (or trustees) by the Conveyance,

**"the Conveyance"** means the Conveyance registered on the Records of this Island on the 12<sup>th</sup> May 1827 by which Thomas Nant and Marie Nant (née Le Tissier), his wife, transferred to certain *sequestres* (or trustees) premises at La Fosse, St Martin on which there was erected Bethanie Chapel,

**"the members"** means the members for the time being of the congregation of Bethanie Chapel.

**Citation.**

7. This Law may be cited as the Bethanie Chapel (Guernsey) Law, 2010.

# PROJET DE LOI

ENTITLED

## **The Guernsey Finance LBG (Levy) (Guernsey) Law, 2010**

### ARRANGEMENT OF SECTIONS

1. Imposition of levy.
2. Purpose of levy.
3. Basis of calculation of levy.
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16. Annual reports and accounts.
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# PROJET DE LOI

ENTITLED

## **The Guernsey Finance LBG (Levy) (Guernsey) Law, 2010**

**THE STATES**, in pursuance of their Resolution of the 25<sup>th</sup> March, 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.

### **Imposition of levy.**

1. (1) A levy to be called the Guernsey Finance levy ("**the levy**") is payable in accordance with the provisions of this Law.

(2) The levy is chargeable in respect of each calendar year upon persons -

- (a) who are licensed persons at the commencement of that year, or
- (b) who become licensed persons in the course of that year.

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

(3) The levy is also chargeable upon or in relation to such event, circumstance or matter as the States Commerce and Employment Department ("**the Department**") may prescribe by regulation.

**Purpose of levy.**

2. The purpose of the levy is to finance (whether in whole or in part) the carrying out by Guernsey Finance LBG ("**Guernsey Finance**") of its objects.

**Basis of calculation of levy.**

3. (1) The levy is payable in respect of each full time employee of the licensed person in question.

(2) For the purposes of this Law an "**employee**" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of service, whether express or implied and whether written or oral.

(3) The Department may by regulation make such provision as it thinks fit in relation to the meaning of the expression "full time employee", including (without limitation) provision permitting the aggregation of hours worked or required to be worked by employees who are not full time employees and by other persons who are not employees so that they may be treated as full time employees for the purposes of the levy.

**Rate of levy.**

4. (1) The rate of the levy shall be determined by regulations of the Department.

(2) Regulations of the Department may also determine the maximum and minimum amount payable by a licensed person by way of levy.

(3) A different rate of levy, and a different maximum and minimum amount payable by way of levy, may be prescribed in respect of different licensed persons or different classes or descriptions of licensed persons.

(4) Notwithstanding any other provision of this Law, in respect of the year 2010, and in respect of licensed persons who held or were deemed to hold a licence on the 1<sup>st</sup> January, 2010 or the date of commencement of this Law (whichever is later), the levy may be of such amount as is necessary to finance (whether in whole or in part) the carrying out by Guernsey Finance of its objects in both the year 2010 and in the year 2009; and the provisions of this Law shall apply accordingly.

**Exemption from levy.**

5. The Department may by regulation specify any licensed person or class or description of licensed person which is exempt from payment of the levy or by whom the levy is payable at a reduced rate.

**Administration of Law.**

6. (1) The Department is responsible for the administration of the provisions of this Law and for the assessment and collection of the levy and in particular, but without limitation, for determining not only the rate of the levy in accordance with section 4 but also the amount of the levy due from any licensed person.

(2) The Department may by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of its functions under this Law to be exercised in its name by any person, body or authority named or described in the instrument, other than this power of delegation; and references in this Law to the Department shall be construed accordingly.

(3) A function exercised by a delegate pursuant to an arrangement made under this section is for all purposes exercised by the Department; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Department.

(4) An arrangement made under this section for the exercise of a function by a delegate -

(a) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by the Department while the arrangement subsists.

(5) Without limitation, the persons to whom functions may be delegated under this section include the Registrar of Companies<sup>b</sup>.

(6) The provisions of subsections (2) to (5) are for the avoidance of doubt and without prejudice to any powers arising otherwise than under this Law (for example, under the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>c</sup>).

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<sup>b</sup> The office of Registrar was established under section 495 of the Companies (Guernsey) Law, 2008 (no. VIII of 2008).

<sup>c</sup> No. XXI of 1991.

**Payment of levy.**

7. (1) Subject to the provisions of this Law, liability to the levy arises upon service by the Department of an account specifying the amount of the levy due.

(2) Accounts shall be served -

(a) on or at any time after -

(i) the 1<sup>st</sup> January in the year in respect of which the levy is due, and

(ii) any other event, circumstance or matter prescribed by regulations of the Department upon or in relation to which the levy is chargeable,

(b) on the licensed person by whom the levy is payable, and

(c) in such form and manner as the Department may determine.

(3) The levy is payable in such manner and at such times and intervals as the Department may require; and the requirements of the Department may make different provision in respect of -

(a) different licensed persons or classes or descriptions of licensed persons, and

(b) different methods of payment.

(4) Without prejudice to the generality of subsection (3), requirements under that subsection may make provision for the levy -

(a) to be discounted by such amount, and

(b) to be paid by such instalments,

as the Department thinks fit.

(5) In any proceedings for the recovery of the levy or any penalty in respect thereof a copy of an account produced by the Department (whether from data stored electronically or by other means) is evidence of the contents of the account.

(6) Where different rates of levy and different maximum and minimum amounts payable by way of levy are prescribed under section 4(3), a licensed person who during the course of a year becomes the holder of a new or amended licence of a prescribed class or description different to that of the licence previously held by him is liable to pay any additional amount due by way of levy in respect of the new or amended licence.

**Penalties for late payment.**

8. Where the levy is not paid in accordance with the provisions of this Law, the Department may charge a flat rate penalty of £250 (or such other amount as the Department may prescribe by regulation) for each month or part of a month in which the levy is unpaid, and the penalty is recoverable in the manner in which, and from the person from whom, the levy is recoverable.

**Levy recoverable as civil debt.**

9. (1) The levy, together with any penalty recoverable in respect thereof, is recoverable from licensed persons as a civil debt due to the States of Guernsey.

(2) If two or more persons are liable for any payment of the levy, their liability for the levy, and any penalty recoverable in respect thereof, is joint and several.

**Reduction, and non-refundability, of levy.**

10. (1) The amount of the levy payable by a person who becomes a licensed person in the course of a year shall be reduced by one twelfth for each complete calendar month to have expired in that year on the date when he became a licensed person.

(2) Where different rates of levy and different maximum and minimum amounts payable by way of levy are prescribed under section 4(3), the amount of additional levy payable pursuant to sections 7(6) and 11(3) by a licensed person who during the course of a year becomes the holder of a new or amended licence of a prescribed class or description different to that of the licence previously held by him shall be reduced by one twelfth for each complete calendar month to have expired in that year on the date when he became the holder of the new or amended licence.

(3) When a person ceases to be a licensed person in the course of a year, neither the levy nor any part thereof is refundable.

(4) Where different rates of levy and different maximum and minimum amounts payable by way of levy are prescribed under section 4(3), and a licensed person during the course of a year becomes the holder of a new or

amended licence of a prescribed class or description different to that of the licence previously held by him, neither the levy nor any part thereof is refundable by reason of the fact that a lesser amount is due by way of levy in respect of the new or amended licence.

**Number of employees to be taken as at 31<sup>st</sup> December.**

11. (1) For the purposes of calculating the amount of the levy due in any year in respect of any licensed person the number of full time employees shall, subject to subsections (2) and (3), be taken to be the number thereof as at the 31<sup>st</sup> December in the preceding year.

(2) In the case of a person who becomes a licensed person during the course of a year, the number of full time employees shall be taken to be the number thereof as at the date of the grant of the licence.

(3) Where different rates of levy and different maximum and minimum amounts payable by way of levy are prescribed under section 4(3) then, in the case of a licensed person who during the course of a year becomes the holder of a new or amended licence of a prescribed class or description different to that of the licence previously held by him, the number of full time employees shall be taken, subject to subsection (2), to be the number thereof as at the date when he became the holder of the new or amended licence, and he is liable to pay any additional amount due by way of levy in respect of that number of employees.

**Duty to notify change of licence.**

12. (1) A licensed person shall inform the Department of any change in -

(a) the class or description of licence held by him, or



(b) the conditions of the licence held by him,

which affects or may affect the amount of levy payable by him as soon as it is reasonably practicable to do so and in any case within a period of 28 days immediately following the date of the change.

(2) The information shall be provided in such form and manner (if any) as the Department may require.

(3) The information shall be accompanied by such other information and documents as the Department may reasonably require for the purpose of performing its functions under the provisions of this Law.

(4) A person who without reasonable excuse fails to comply with this section or any requirement under it is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

**Duty to notify obtaining of licence.**

13. (1) If a person becomes a licensed person he shall inform the Department of that fact as soon as it is reasonably practicable to do so and in any case within a period of 28 days immediately following the date of the grant of his licence.

(2) The information shall be provided in such form and manner (if any) as the Department may require.

(3) The information shall include the name and address of the licensed person and particulars of his licence and shall be accompanied by such other information and documents as the Department may reasonably require for the purpose of performing its functions under the provisions of this Law (including,

without limitation, information and documents relating to his employees).

(4) A person who without reasonable excuse fails to comply with this section or any requirement under it is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

**Provision of information as to employees, etc.**

**14.** (1) Without prejudice to sections 12 and 13, the Department may by notice in writing require a licensed person or former licensed person to provide such information and documents relating to his full time employees as the Department may reasonably require for the purpose of performing its functions under the provisions of this Law.

(2) The information and documents shall be provided in such form and manner (if any) as the Department may require.

(3) If there is any change to any information provided to the Department under this section or under section 12 or 13 by or on behalf of any person (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), that person shall inform the Department of the change as soon as is reasonably practicable and in any case within a period of 28 days after the date of the change.

(4) Where a person is required by or under this section or section 12 or 13 to produce any documents, the Department may, if the documents are produced, take and retain copies of them or extracts from them so far as necessary for the purpose of performing its functions under the provisions of this Law.

(5) A person who without reasonable excuse fails to comply with this section or any requirement under it is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

**Power to estimate liability to levy in cases of failure to co-operate.**

**15.** (1) Where the Department, having made all such efforts as are reasonable in the circumstances, is unable to obtain such information as may be reasonably necessary for the purposes of determining the amount of levy payable by a licensed person, it may estimate the amount payable on the basis of any relevant information available to it.

(2) Where subsection (1) applies, the levy is payable by the licensed person in question on the basis of the Department's estimate; and the provisions of this Law apply accordingly.

**Reports and accounts.**

**16.** (1) Guernsey Finance shall, whenever required to do so by the Department, and without prejudice to its powers to prepare and publish reports of its own motion, submit to the Department a report in respect of the carrying out of its objects at such times and intervals, and in such form and manner, as the Department may require.

(2) The Department may appoint an independent person to conduct a review of and to report upon the economy, efficiency and effectiveness in which Guernsey Finance uses its resources and carries out its objects; and Guernsey Finance and its members, officers and employees shall take all reasonable steps to co-operate with and assist any person so appointed.

(3) The Department -

- (a) may submit any report prepared under subsection (1) or (2) to the States, and
- (b) may at the same time or at any other time submit their own report to the States on the carrying out by Guernsey Finance of its objects.

**Prohibition against disclosure of information.**

**17.** (1) No document or information acquired by any person in connection with the operation of the provisions of this Law shall be disclosed, except -

- (a) to the extent necessary to enable the Department to perform its functions under this Law,
- (b) for the purposes of civil proceedings in connection with the operation of this Law,
- (c) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings,
- (d) with the consent of the person to whom it relates and (if different) the person from whom it was acquired,
- (e) to comply with an order of a court,
- (f) where, in order to enable or assist it to perform its functions under this Law, the Department considers it

necessary to seek advice from a qualified person on any matter of law, accountancy or any other matter requiring the exercise of professional skill, to the extent necessary to ensure that that person is properly informed as to the matters on which his advice is sought,

- (g) to the extent that its disclosure is expressly authorised or required by or under any enactment, or
- (h) in accordance with section 22.

(2) A person who discloses or causes or permits the disclosure of any document or information in contravention of subsection (1) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

(3) In proceedings against a person for an offence under this section it is a defence for him to show -

- (a) that he took all reasonable steps and exercised all due diligence to avoid committing the offence, or
- (b) that he did not know and had no reason to suspect that the document or information in question was to be regarded as confidential.

#### **Penalties for false information.**

18. (1) If a person -

- (a) in purported compliance with a requirement imposed by or under, or otherwise for the purposes of, the provisions of this Law, or
- (b) otherwise than as mentioned in paragraph (a) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Department for the purpose of performing its functions under the provisions of this Law,

does any of the following -

- (i) he makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) he recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) he produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) he recklessly produces or furnishes or

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

then he is guilty of an offence.

- (2) A person guilty of an offence under subsection (1) is liable -
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both,
  - (b) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

**Criminal liability of directors, etc.**

**19.** (1) Where an offence under this Law is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body or any person purporting to act in any such capacity, he as well as the body 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.

**Proceedings against unincorporated bodies.**

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

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

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

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

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

**Power to apply Law to successor bodies.**

21. The States may by Ordinance direct that the provisions of this Law shall apply (subject to such adaptations, exceptions and modifications as may be set out in the Ordinance) to any body specified in the Ordinance which succeeds to the



objects, undertaking and functions of Guernsey Finance.

**Power of Commission and Department to exchange information.**

22. (1) The Guernsey Financial Services Commission ("**the Commission**") may, notwithstanding the provisions of any other enactment, and for the purpose of enabling the Department to exercise its functions under the provisions of this Law, disclose to the Department or any member, officer or servant thereof -

- (a) notice of any person becoming, or ceasing to be, a licensed person,
- (b) notice of any change in the class or description of licence held by any licensed person which affects or may affect the amount of levy payable by him,
- (c) the business address in Guernsey of any licensed person, and
- (d) such other information relating to licensed persons as the Department may reasonably require.

(2) The Department may, notwithstanding the provisions of any other enactment, and for the purpose of enabling the Commission to exercise its functions or to investigate matters of relevance to its functions, disclose to the Commission or any member, officer or servant thereof any document or information acquired by it in connection with the operation of the provisions of this Law.

(3) Information disclosed to any person under subsection (1) or  
(2) -

- (a) may be used for the purposes mentioned in those subsections, but
- (b) shall not be further disclosed except as mentioned in paragraphs (a) to (g) of section 17(1) (and those paragraphs have effect as if references to the Department and this Law included references to the Commission and any enactment administered by it).

Sections 17(2) and 17(3) apply to a disclosure in contravention of this subsection as they apply to a disclosure in contravention of section 17(1).

**Service of documents.**

23. (1) Any document to be served for the purposes of this Law is validly served, in the case of a licensed person, by being left at, or sent by post or transmitted to, their business address in Guernsey for the time being notified to the Commission or, if there is no such address -

- (a) in the case of an individual, by being delivered to him or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) in the case of a body corporate with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) in the case of a body corporate without a registered

office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,

- (d) in the case of an unincorporated body -
  - (i) by being served on any partner, member, manager, director or other similar officer thereof in accordance with paragraph (a), or
  - (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) in the case of the Department, by being left at, or sent by post or transmitted to, its principal office in Guernsey,

and in this section -

**"by post"** means by registered post, recorded delivery service or ordinary letter post, and

**"transmitted"** means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in

which event the document shall be regarded as served when it is received.

(2) If a person notifies the Department of an address for service within Guernsey for the purposes of this Law, any document to be served on that person may be served by being left at, or sent by post or transmitted to, that address.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

(4) No document to be served on the Department for the purposes of this Law shall be deemed to have been served until it is received.

(5) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting, and
- (b) in the case of a document sent elsewhere by airmail, on the seventh day after the day of posting,

excluding in each case any non-business day.

(6) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(7) In this section -

"document" means any notice, account or other document other than a summons, and

"served" includes given.

**Documents to be submitted, etc, in electronic form.**

24. (1) Where under the provisions of this Law anything is authorised or required to be done in such form or manner as the Department may require or determine, the Department may, without limitation, and whether generally or in any particular case or class of cases, require or determine that it shall be done in such electronic form and by such electronic means as the Department thinks fit.

(2) This section is without prejudice to the Electronic Transactions (Guernsey) Law, 2000<sup>d</sup>.

**General provisions as to subordinate legislation.**

25. (1) The States may by Ordinance -

(a) amend sections 3, 11, 14 and 22 and (so as to amend the meaning of any expression defined therein or to define any other expression) section 26 where it appears to the States to be necessary or expedient to do so for the purpose of -

(i) enabling Guernsey Finance or the Department more effectively to carry out, respectively, its objects or its functions under the provisions of this Law,

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<sup>d</sup> Order in Council No. VIII of 2000.

- (ii) amending the basis on which the levy is calculated and payable or improving or enhancing the administration and collection of the levy,
  - (iii) enhancing, promoting or protecting the reputation or economic interests of Guernsey,
  - (iv) assisting or co-operating with, in the interests of the public or otherwise, any person or body which appears to the States to carry out in a place outside Guernsey objects and functions corresponding to the objects of Guernsey Finance,
- (b) make such other provision as they think fit for the purposes of carrying this Law into effect.

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

(2) Any Ordinance or regulation under this Law -

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

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

(3) Any power to make an Ordinance or regulation 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 or

descriptions of licensed persons.

(4) Regulations of the Department under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve to annul the regulations, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(5) The Department shall, before making any regulations under this Law, consult -

(a) Guernsey Finance,

(b) such other persons or bodies as it thinks fit,

in relation to the terms of the proposed regulations; but a failure to comply with this subsection does not invalidate the regulations.

### **Interpretation.**

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

"**body**" includes a body incorporated under the law of any country or territory and any unincorporated body,

"**Commission**" means the Guernsey Financial Services Commission,

"**Department**" means the States Commerce and Employment Department, and see section 6(2),

"**document**" includes information recorded in any form (including



without limitation, in electronic form) and, in relation to information recorded otherwise than in legible form, references to its production, however expressed, include references to the production of a copy of the information in legible form,

**"employee"** : see section 3(2),

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

**"full time employee"** : see section 3(3) and any regulations of the Department for the time being in force thereunder,

**"functions"** includes powers and duties,

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

**"Guernsey Finance"** means the company limited by guarantee incorporated in Guernsey in 2004 under the name GuernseyFinance LBG<sup>e</sup>, and includes any successor body specified by Ordinance under section 21,

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

**"the levy"** : see section 1(1),

**"licence"** means a licence, consent, registration, permission or authorisation held or deemed to be held from the Guernsey Financial Services Commission under the regulatory Laws,

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<sup>e</sup> Registration number 38776.

**"licensed person"** means a person who holds or is deemed to hold a licence,

**"non-business day"** means -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States of Guernsey under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>f</sup>,

**"the objects"** of Guernsey Finance include its functions under its memorandum and articles of incorporation,

**"the provisions of this Law"** includes the provisions of any Ordinance or regulations under it,

**"regulatory Laws"** means -

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) the Regulation of Fiduciaries, Administration

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<sup>f</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000,

- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (f) any other enactment prescribed for the purposes of this Law by regulations of the Department,

"**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, 1989<sup>g</sup>,

"**year**" means a calendar year.

(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.

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

**Citation.**

27. This Law may be cited as the Guernsey Finance LBG (Levy) (Guernsey) Law, 2010.

**Commencement.**

28. This Law shall come into force on the day specified by regulations of the Department; and different days may be appointed for different provisions and different purposes.

## **The Income Tax (Guernsey) (Approval of Agreement with Australia) Ordinance, 2010**

**THE STATES**, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975, as amended<sup>a</sup>, and all other powers enabling them in that behalf, hereby order:-

### **Approval of Agreement.**

1. The agreement providing for the obtaining and exchanging of information in relation to tax, made between the States of Guernsey and the Government of Australia, signed at London on the 7<sup>th</sup> October, 2009, is pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, hereby specified for the purposes of that Law.

### **Citation.**

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with Australia) Ordinance, 2010.

### **Commencement.**

3. This Ordinance shall come into force on the 27 January 2010.

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<sup>a</sup> Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of the Income Tax (Guernsey) (Amendment) Law, 2005 (No. XVII).

## **The Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2010**

**THE STATES**, in pursuance of their Resolutions of the 27th September, 2006<sup>a</sup> and the 26th November, 2009<sup>b</sup>, and in exercise of the powers conferred on them by sections 66 and 69 of the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>c</sup> and sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>d</sup>, hereby order:-

### **Amendment of the 2001 Law.**

1. The Data Protection (Bailiwick of Guernsey) Law, 2001 ("**the 2001 Law**") is amended as follows.

### **Amendment of section 1.**

2. In section 1(1) (basic interpretative provisions) of the 2001 Law, for the definition of "**personal data**" substitute -

"**personal data**" means data which relate to a living individual who can be identified -

(a) from those data, or

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<sup>a</sup> Article XIV of Billet d'État No. XVI of 2006.

<sup>b</sup> Article XVIII of Billet d'État No. XXXI of 2009.

<sup>c</sup> Order in Council No. V of 2002 as modified by Ordinance No. XXIV of 2004, the European Communities (Implementation of Council Directive on Privacy and Electronic Communications) (Sark) Ordinance, 2004 and G.S.I. Nos.14, 15, 16 and 24 of 2002.

<sup>d</sup> Order in Council No. III of 1994.

- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and

includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual,".

**Insertion of new section 6A.**

3. After section 6 (the Commissioner) of the 2001 Law, insert the following section -

**"Exclusion of liability.**

**6A.** No liability shall be incurred by -

- (a) the Commissioner in respect of anything done or omitted to be done in the discharge or purported discharge of his functions, or
- (b) any person whom the Commissioner has, under the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991, arranged to carry out a function of the Commissioner, in respect of anything done or omitted to be done in the discharge or purported discharge of such a function,

unless the thing was done or omitted to be done in bad faith.".

**Amendment of section 7(10).**

4. In section 7(10) of the 2001 Law, for the words "that section" substitute "this section".

**Repeal of section 15(2).**

5. Section 15(2) (whether section 7(9) applicant is entitled to information) of the 2001 Law is repealed.

**Amendment of references to committees of the States.**

6. (1) In section 29(5)(d) of the 2001 Law, for paragraph (d) substitute the following paragraph -

"(d) a department of the States or a committee of the States of Alderney or the Chief Pleas of Sark, or".

(2) In section 31(3)(b) of the 2001 Law, for the words "or committee of the States" substitute ", a department of the States or a committee of the States of Alderney or the Chief Pleas of Sark".

(3) In paragraph 5(c) of Schedule 2 and paragraph 7(1)(c) of Schedule 3 of the 2001 Law, for the words "or a committee of the States" substitute ", a department of the States or a committee of the States of Alderney or the Chief Pleas of Sark".

**Amendment of section 34(2).**

7. In section 34(2) (definition of "public information") of the 2001 Law, at the end of paragraph (a) omit the word "and" and after paragraph (b) add the following word and paragraph -



", and

(c) information held on a public register."

**Amendment of section 43.**

8. In section 43 (information notices) of the 2001 Law -

(a) for subsection (1) substitute -

"43. (1) If the Commissioner -

(a) has received a request under section 42 in respect of any processing of personal data, he may serve the data controller,

(b) reasonably requires any information for the purpose of determining whether a data controller has complied or is complying with the data protection principles, he may serve the data controller, or

(c) whilst undertaking an assessment as to whether it is likely or unlikely that processing of personal data by a data controller complies with this Law, has reasonable grounds for suspecting that another data controller or a data processor holds information that would assist in determining whether the data controller has complied, or is complying, with

the data protection principles, he may serve  
the other data controller or the data processor,

with a notice (in this Law referred to as "**an information notice**") requiring the data controller in question or the data processor, as the case may be, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the request or to compliance with the principles as is so specified.", and

(b) in subsection (2) -

(i) at the end of paragraph (a), omit the word  
"or", and

(ii) after paragraph (b), add -

", or

(c) in a case falling within subsection (1)(c), a statement that the Commissioner has reasonable grounds for suspecting that the other data controller or the data processor, as the case may be, holds the specified information and that the Commissioner regards it as relevant for the purpose of determining whether the data controller has

complied, or is complying, with the data protection principles and the Commissioner's reasons -

- (i) for so suspecting that the other data controller or the data processor holds such information, and
- (ii) for regarding it as relevant for that purpose."

**Amendment of section 54(4).**

9. In section 54(4) (international co-operation) of the 2001 Law, omit the word "also".

**Amendment of section 55(2).**

10. In section 55(2) of the 2001 Law (unlawful obtaining etc. of personal data), at the end of paragraph (c) omit the word "or" and after paragraph (c) insert the following paragraph -

"(ca) that he acted -

- (i) for the special purposes,
- (ii) with a view to the publication by any person of any journalistic, literary or artistic material, and
- (iii) in the reasonable belief that in the

particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest, or".

**Amendment of section 56(5).**

**11.** In section 56(5) (definition of "relevant record") of the 2001 Law, at the end insert "but excludes a disclosure issued by or on behalf of the Chief Officer of Police which complies with any relevant code of practice issued by the Commissioner under section 51(3)".

**Amendment of section 60.**

**12.** In section 60 (prosecutions and penalties) of the 2001 Law -

- (a) in subsection (1), after the words "other than" insert "section 55 and", and
- (b) after subsection (1) add the following subsection -

"(1A) A person guilty of an offence under section 55 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 two years, or to a fine, or to both."

**Substitution of section 62.**

13. For section 62 (application to committees of the States) of the 2001 Law substitute the following section -

**"Application to the Crown, departments and committees.**

62. (1) This Law binds the Crown and is applicable to any department of the States and any committee of the States of Alderney or the Chief Pleas of Sark.

(2) For the purposes of the Law each such department of the States or committee shall be taken to be a separate person.

(3) Where any notice under this Law is served on a department of the States, or any committee of the States of Alderney or the Chief Pleas of Sark, by means of service on the chief officer of such a department or the chairman of such a committee in accordance with section 65(1), that chief officer or chairman, as the case may be, shall ensure that, if such a notice requires compliance, it is complied with."

**Amendment of section 65(1).**

14. In section 65 (service of notices by Commissioner) of the 2001 Law, at the end of subsection (1) add the following paragraphs -

"(c) if that person is a department of the States, be served on that department -

(i) by sending it by post to the chief

officer (however named) of that department at that department's principal office, or

(ii) by addressing it to the chief officer (however named) of that department and leaving it at that office,

(d) if that person is a committee of the States of Alderney or the Chief Pleas of Sark, be served on that committee -

(i) by sending it by post to the chairman of that committee (however named) at that committee's principal office, or

(ii) by addressing to the chairman (however named) of that committee and leaving it at that office."

**Amendment of section 67(1).**

**15.** In section 67(1) (interpretation and supplementary definitions) of the 2001 Law -

(a) for the definition of "**committee of the States**" substitute -

**"committee of the States of Alderney or the Chief Pleas of Sark"** means any committee (however named) of the States of Alderney or the Chief Pleas

of Sark,"

- (b) after the definition of **"the Data Protection Directive"** insert the following definition -

**"department of the States"** means any department, council or committee (however named) of the States,"

- (c) for the definition of **"health professional"** substitute -

**"health professional"** means -

- (a) the States of Guernsey Health and Social Services Department, and

- (b) any person who -

- (i) practises, or holds himself out as practising or being prepared to practise, as a regulated health professional, or

- (ii) uses any regulated title,

within the meaning of the Registered Health Professionals Ordinance, 2006," and

- (d) in the definition of "**Law Officer of the Crown**" omit the word "General".

**Amendment of section 68.**

16. In section 68 (index of defined expressions) of the 2001 Law -
- (a) in column 1 of the Table for "committee of the States" substitute -
- "committee of the States of Alderney or the Chief Pleas of Sark",
- (b) after the entry in the Table relating to "data subject" insert the following entry -
- "department of the States section 67(1)".

**Amendment of section 73.**

- 17.** In section 73 (rules of court) of the 2001 Law -
- (a) omit the words "dealing with", and
- (b) at the beginning of paragraph (a) insert "dealing with".

**Consequential amendment.**

- 18.** (1) The European Communities (Implementation of Privacy



Directive) (Guernsey) Ordinance, 2004<sup>e</sup> is amended as follows.

(2) In paragraph 4 of schedule 1, for item (a) substitute -

"(a) for subsections (1) and (2) substitute the following -

"(1) If the Commissioner -

(a) reasonably requires any information for the purpose of determining whether a person has complied, or is complying, with the relevant requirements, he may serve that person, or

(b) whilst undertaking an assessment as to whether or not a person has complied or is complying with the relevant requirements, has reasonable grounds for suspecting that another person holds information that would assist in determining whether the person being assessed has complied, or is complying, with the relevant requirements, he may serve that other person,

with a notice (in this Law referred to as "an information

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<sup>e</sup> Ordinance No. XXIV of 2004.

notice") requiring him, within such time as may be specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to compliance with the relevant requirements as may be so specified.

(2) An information notice must contain -

- (a) in a case falling within subsection (1)(a), a statement that the Commissioner regards the specified information as relevant for the purpose of determining whether the person has complied, or is complying, with the relevant requirements and his reason for regarding it as relevant for that purpose,
- (b) in a case falling within subsection (1)(b), a statement that the Commissioner has reasonable grounds for suspecting that the other person holds the specified information and that the Commissioner regards it as relevant for the purpose of determining whether the person being assessed has complied, or is complying, with the relevant requirements and his reasons -

- (i) for so suspecting that the person on whom the notice is served holds such information, and
- (ii) for regarding it as relevant for that purpose.";".

**Interpretation.**

19. (1) In this Ordinance, unless the context requires otherwise -

"**the 2001 Law**" means the Data Protection (Bailiwick of Guernsey) Law, 2001,

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

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

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

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

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

**Extent.**

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

**Citation.**

21. This Ordinance may be cited as the Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

**Commencement.**

22. This Ordinance shall come into force on the 1st day of March, 2010.

## **The Milk (Control) (Guernsey) (Amendment) Ordinance, 2010**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> April, 2007<sup>a</sup>, and in exercise of the powers conferred on them by sections 2 and 11 of the Milk and Milk and Milk Products (Guernsey) Law, 1955<sup>b</sup>, hereby order:-

### **Amendment of the 1958 Ordinance.**

1. (1) The Milk (Control) (Guernsey) Ordinance, 1958, as amended<sup>c</sup> is further amended as follows.

(2) In section 1(1) –

(a) the definition of "pot" is repealed,

(b) immediately after subsection (2), insert –

"(3) Unless the context requires otherwise, an expression used in this Ordinance has the same meaning as in the Law."

(3) In section 3(1) –

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<sup>a</sup> Article IX of Billet d'État No. XIII of 2007.

<sup>b</sup> Ordres en Conseil Vol. XVI, p. 193; amended by Vol. XIX, p. 134 and by Vol. XXI, p.19 and No I of 2002.

<sup>c</sup> Recueil d'Ordonnances Tome XII, p. 23; amended by Tome XIII, p. 84; Tome XIV, pp. 28 and 277; Tome XVII, p. 1; Tome XXI, p. 427; Tome XXII, pp. 453 and 473; No. XII of 1996; No. XX of 2001; and No. XXXIII of 2003.

- (a) in paragraph (c) the word "or" is repealed,
- (b) in paragraph (d) after the word "him" insert ";or", and
- (c) after paragraph (d) insert the following paragraph –

"(e) the manufacture of a milk product by him  
subject always to –

- (i) prior written approval, given by the  
Committee, of –

(A) the manufacture of that milk  
product, and

(B) the quantity of milk that can be  
retained for such manufacturing  
purposes (which approval may  
be limited in time and/or  
terminated); and

- (ii) such conditions as the Committee from  
time to time deem appropriate."

- (4) In section 4 –

- (a) after subsection (1) insert the following subsection –

"(1A) For the purpose of classifying milk the States Dairy shall test all milk received, in accordance with the tests, standards and/or protocols specified by the Committee from time to time, for –

- (a) the milk's –
  - (i) water content,
  - (ii) microbiological content,
  - (iii) somatic cell count,
  - (iv) contamination levels,
- (b) the existence in the milk of antibiotics or any other veterinary medicinal product that the Committee may specify, and/or
- (c) any other thing that the Committee may specify from time to time.",

(b) for subsection (2) substitute the following subsection–

"(2) The tests carried out under subsection (1A) shall enable all milk received to fall into one of the following grades, that is to say –

Grade 1	Satisfactory for retail milk trade or for manufacturing purposes
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Grade 2 Unfit for retail milk trade or for manufacturing purposes.", and

(c) in subsection (2A) for the phrase "Grade 3" substitute "Grade 2".

(5) In section 5(b) –

(a) the words "Grade 2 milk or" are repealed, and

(b) for "Grade 3" substitute "Grade 2".

(6) In section 6 –

(a) for subsection (1) substitute the following subsection –

"(1) Subject to the provisions of this section, the Committee may, from time to time, by order fix the price payable by the Committee in respect of milk delivered to the Committee under the provisions of this Ordinance and classified as Grade 1 milk, and different prices may be so fixed by the Committee for Grade 1 milk which –

(a) is surplus to the Island's milk requirements;

(b) is not surplus to the Island's milk requirements;

(c) is used for the manufacture of milk products for sale on the Island;



- (d) is used for the manufacture of milk products for sale outside of the Island;
  - (e) is delivered to the States Dairy at different times of the year in order to account for the seasonal variation in the supply of milk;
  - (f) exceeds any quality standard that the Committee may specify, such quality being determined by any test specified by the Committee pursuant to section 4(1A);
  - (g) has a fat, protein, mineral, lactose (or any other constituent of milk specified by the Committee) content which is equal to or greater than such level as the Committee may specify, such content being determined by any test specified by the Committee pursuant to section 4(1A); and/or
  - (h) meets such other standards or criteria that the Committee may determine.",
- (b) in subsection (2) –
- (i) for "pot" substitute "litre", and
  - (ii) for "States Committee for Agriculture" substitute "Committee",

- (c) in subsection (2A) for "pot" substitute "litre",
- (d) in subsection (3) the phrase "after consultation with the States Committee for Agriculture and Fisheries" is repealed,
- (e) in subsection (4) for each reference to "pots" substitute "litres" , and
- (f) in subsections (5)(b) and (6)(b) –
  - (i) the phrase "Grade 2 milk or" is repealed, and
  - (ii) for "Grade 3" substitute "Grade 2".
- (7) In section 6A(1) –
  - (a) the phrase "Grade 2 milk or" is repealed, and
  - (b) for "Grade 3" substitute "Grade 2".
- (8) Section 7 is repealed.
- (9) In section 8(3) –
  - (a) at the beginning of the section insert the phrase "With the exception of delivery charges," , and
  - (b) the word "A" shall not be capitalised.

**Interpretation.**

2. (1) In this Ordinance –

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

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

(2) 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.**

3. This Ordinance may be cited as the Milk (Control) (Guernsey)  
(Amendment) Ordinance, 2010.

**Commencement.**

4. This Ordinance shall come into force on the 1 February 2010.

## **The Vehicular Traffic (Amendment) Ordinance, 2010**

**THE STATES**, in pursuance of their Resolution of the 29<sup>th</sup> November, 2006<sup>a</sup>, and in exercise of all other powers enabling them in that behalf, hereby order: –

### **Amendment of Ordinance of 1929.**

1. The Ordinance entitled "Ordonnance supplémentaire à l'Ordonnance ayant rapport au Trafic Véhiculaire en cette Île du 2 mars 1929" of the 14<sup>th</sup> December, 1929<sup>b</sup> is amended by substituting, for paragraph (a) of article 1, the following paragraph –

- "(a) To drive or ride on a motor bicycle –
  - (i) carrying two or more persons besides the driver, or
  - (ii) carrying a person other than the driver, unless –
    - (A) that person sits astride a proper seat securely fixed to the motor bicycle behind the driver's seat,
    - (B) the motor bicycle is equipped with suitable supports or rests for the feet of

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

<sup>b</sup> Recueil d'Ordonnances Tome VIII, p. 192; amended by Tome XXIV, p. 354.

that person, and

- (C) that person sits facing forward with both feet on those supports or rests."

**Citation and commencement.**

2. (1) This Ordinance may be cited as the Vehicular Traffic (Amendment) Ordinance, 2010.

- (2) This Ordinance comes into force on 4 January 2010.

## **The Driving Licences (Guernsey) (Amendment) Ordinance, 2010**

**THE STATES**, in pursuance of their Resolutions of the 31<sup>st</sup> day of March, 2006<sup>a</sup>, and the 29<sup>th</sup> day of November, 2006<sup>b</sup>, and in exercise of the powers conferred upon them by section 2 of the Motor Taxation and Licensing (Guernsey) Law, 1987<sup>c</sup>, as amended, and all other powers enabling them in that behalf, hereby order:-

### **Amendments to the Ordinance of 1995.**

1. (1) The Driving Licences (Guernsey) Ordinance, 1995<sup>d</sup>, as amended, is further amended as follows.

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

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

<sup>c</sup> Orders in Council Vol. XXX, p. 341; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Orders in Council Vol. XXXI, p. 278); the Motor Taxation and Licensing (Amendment) (Guernsey) Law, 1995 (No. XI of 1995); the Motor Taxation and Licensing (Guernsey) (Amendment) Law, 2000 (No. IX of 2000); the Motor Taxation and Licensing (Guernsey) (Amendment) Law, 2007 (No. XIX of 2007); the Island Traffic Committee (Transfer of Functions) (No. 2) Ordinance, 1992 (Ordinances of the States Vol. XXVI, p. 90); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

<sup>d</sup> Ordinances of the States, Vol. XXVI, p. 374; as amended by the Driving Licences (Amendment) (Guernsey) Ordinance, 1996 (No. XVIII of 1996); the Driving Licences (Amendment) (No. 2) (Guernsey) Ordinance, 1996 (No. XXX of 1996); the Driving Licences (Amendment) (No. 3) (Guernsey) Ordinance, 1996 (No. XXXIV of 1996); the Driving Licences (Guernsey) (Amendment) Ordinance, 1998 (No. XI of 1998); the Driving Licences (Guernsey) (Amendment) Ordinance, 2002 (No. XXX of 2002); the Motor Vehicles, Traffic and Licensing (Amendment) Ordinance, 2007 (No. XII of 2007); the Driving Licences (Amendment) (Guernsey) Regulations, 2002 (G.S.I. No. 25 of 2002); the Driving Licences (Amendment) (Guernsey) Regulations, 2006 (G.S.I. No. 22 of 2006); the Driving Licences (Increase in Fees) Regulations, 2007 (G.S.I. No. 9 of 2007); the Driving Tests (Increase in Fees) Regulations, 2007 (G.S.I. No. 27 of 2007).

(2) For subparagraph (i) of section 1(2)(c), substitute –

"(i) he satisfies the Committee that he is, or was at any time within the period of five years ending on the date when that application made, the holder of a valid full licence authorising him to drive a motor vehicle of that class and issued by the competent authority –

(A) in Great Britain, Northern Ireland, the Isle of Man or Jersey,

(B) of a member state of the European Union, or

(C) of a country with which the United Kingdom has a reciprocal arrangement, or".

(3) Delete subparagraphs (ii) and (iii) of section 1(2)(c).

(4) In section 1(4), for "(c)(i)" substitute "(c)(iv)".

(5) At the end of Schedule 1, insert the following –

"Driving whilst disqualified from holding or obtaining a driving licence (only if committed on or after 1<sup>st</sup> February 2010),

Causing death by careless driving when under the influence of drink or drugs (only if committed on or after 1<sup>st</sup> February 2010), and

Failing to give permission for a laboratory test of a specimen of blood (only if committed on or after 1<sup>st</sup> February 2010)".

**Citation and commencement.**

2. (1) This Ordinance may be cited as the Driving Licences (Guernsey) (Amendment) Ordinance, 2010.

(2) This Ordinance shall come into force on 1<sup>st</sup> February, 2010.



*ORDINANCE TO BE LAID BEFORE THE STATES***The Public Holidays Ordinance, 2009**

**THE STATES LEGISLATION SELECT COMMITTEE**, in exercise of the powers conferred on the States by section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended<sup>a</sup>, and all other powers enabling them in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948, as amended<sup>b</sup>, and in pursuance of the Resolution of the States of 30<sup>th</sup> September, 2009<sup>c</sup>, hereby orders:

**Amendment of Public Holidays Ordinance.**

1. For section 1 of the Public Holidays Ordinance, 1994<sup>d</sup> substitute -

**"Public Holidays.**

1. The following days shall be public holidays-
  - (a) New Year's Day, if a weekday,
  - (b) the 2nd January, in a year when New Year's Day falls on a Sunday,
  - (c) the 3<sup>rd</sup> January, in a year where New Year's Day falls on a Saturday,

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<sup>a</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

<sup>c</sup> Article X of Billet d'État No. XXIV of 2009.

<sup>d</sup> Recueil d'Ordonnances Tome XXVI, p. 289.

- (d) Easter Monday,
- (e) the first Monday in May,
- (f) the 9th May, Liberation Day,
- (g) the last Monday in May,
- (h) the last Monday in August,
- (i) the 26th December, Boxing Day, if a weekday,
- (j) the 27th December, in a year when Christmas Day or Boxing Day falls on a Sunday,
- (k) the 28<sup>th</sup> December, in a year where Christmas Day or Boxing Day falls on a Saturday,

and in this Ordinance, the expression "weekday" does not include a Saturday."

**Liberation Day in 2010.**

2. Notwithstanding the provisions of section 1(e) of the Public Holidays Ordinance, 1994, Monday, the 10<sup>th</sup> May, 2010 shall be a public holiday.

**Citation.**

3. This Ordinance may be cited as the Public Holidays Ordinance, 2009.

*ORDINANCE TO BE LAID BEFORE THE STATES***The Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009**

**THE STATES LEGISLATION SELECT COMMITTEE**, in exercise of the powers conferred on the States by section 123 of the Children (Guernsey and Alderney) Law, 2008<sup>a</sup> and all other powers enabling them in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform Guernsey Law, 1948<sup>b</sup>, as amended, and in pursuance of the Resolution of 28<sup>th</sup> October, 2004<sup>c</sup>, hereby order:-

**Meaning of "parent" in enactments.**

1. (1) In any provision of an enactment relating to children, unless -
  - (a) in any legal proceedings it appears to a court that such an interpretation would lead to injustice, or
  - (b) the context otherwise requires,

"parent" means, in relation to a child, a father or mother who has parental responsibility in respect of the child.

- (2) Subsection (1) shall not apply to -
  - (a) the Housing (Control of Occupation) (Guernsey) Law, 1994<sup>d</sup>,  
and

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<sup>a</sup> Order in Council No. XIV of 2009.

<sup>b</sup> Ordres en Conseil Vol. XIII, p.288 (there are amendments not material to this Ordinance)

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

<sup>d</sup> Ordres en Conseil Vol. XXXV(1) 1994 p. 75 and Vol. XXXVIII p. 193; Order in Council No. III of 2002; No. VIII of 2007 and No. I of 2009; Ordinance No. XXXIII of 2003); No. XVII of 2008; No. XIV of 2007 and No. XX of 2009.

- (b) any provision of an enactment relating to inheritance.

**Guardians and references to guardians in enactments.**

2. For the avoidance of doubt, for the purposes of any provision of an enactment, a guardian or a person referred to as a guardian has parental responsibility in respect of a child if -

- (a) he has been appointed as a guardian of that child -
  - (i) under Part III of the Law,
  - (ii) by will or other document validly executed for the purpose and the appointment has taken effect,
  - (iii) under the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978<sup>e</sup>, or
  - (iv) under the law of tutelle or otherwise under the customary law of Guernsey or Alderney, or
- (b) he is referred to as a guardian and he is a person who, in the opinion of a court -
  - (i) has been appointed by a court of competent jurisdiction to fulfil the role of parent, and
  - (ii) should be regarded as having parental responsibility in respect of that child.

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<sup>e</sup> Ordres en Conseil Vol. XXVI, pg. 264.

**Consequential amendments and repeals.**

3. Schedule 1 (which makes consequential amendments and repeals) has effect.

**Savings and transitional provisions.**

4. Schedule 2 (which makes savings and transitional provisions) has effect.

**Interpretation.**

5. For the purposes of this Ordinance -
  - (a) "the Law" means the Children (Guernsey and Alderney) Law, 2008, and
  - (b) unless the contrary intention requires, words or expressions which are defined in the Law have the same meanings as in the Law.

**Citation.**

6. This Ordinance may be cited as the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009.

**Commencement.**

7. (1) Subject to subsection (2), this Ordinance shall come into force on 4<sup>th</sup> January 2010.
  - (2) Paragraphs 7, 10(b)(i), 15(c) and 17(a) of Part I and paragraph 3 of Part II of Schedule 1 shall come into force on the making of regulations under section 25 of the Law.

SCHEDULE 1  
CONSEQUENTIAL AMENDMENTS AND REPEALS

PART I  
LAWS

**Loi relative à la Protection des Femmes et Filles Mineures, 1914<sup>f</sup>.**

1. In the Loi relative à la Protection des Femmes et Filles Mineures, 1914 -
  - (a) in Article 5, for "la garde légale", substitute "'parental responsibility', selon la Children (Guernsey and Alderney) Law, 2008",
  - (b) in Article 7, for "ou fille", substitute "ou autre personne qui a 'parental responsibility' à l'égard d'une fille, selon la Children (Guernsey and Alderney) Law, 2008", and
  - (c) in Article 8, for "le maître ou la maîtresse à la garde duquel la fille a été commise", substitute "ou une personne qui a 'parental responsibility' à l'égard de la fille, selon la Children (Guernsey and Alderney) Law, 2008".

**Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes, 1917<sup>g</sup>.**

2. In the Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes, 1917 -

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<sup>f</sup> Ordres en Conseil Vol. V, p. 74; Vol. VIII, p. 458; Vol. XII, p. 25; Vol. XV, p. 250; Vol XXI, p. 34 and Vol. XXXIII, p. 49.

<sup>g</sup> Ordres en Conseil Vol. V, p. 345; Vol. VII, p. 396; Vol. XI, p. 116; Vol. XVI, p. 277; Vol. XX, p. 59; Vol XXI, p. 34; XXVIII, p. 198 and Vol. XXXIII, p. 49.

- (a) in paragraph 1 of Article 7, for "la custodie ou le soin d'un enfant ou d'une jeune personne", substitute "'parental responsibility' à l'égard d'un enfant ou d'une jeune personne, selon la Children (Guernsey and Alderney) Law, 2008",
- (b) in paragraphs 1 and 2 of Article 9, for "la custodie ou le soin d'un enfant ou d'une jeune personne", substitute "'parental responsibility' à l'égard d'un enfant ou d'une jeune personne, selon la Children (Guernsey and Alderney) Law, 2008",
- (c) in Article 10, for "la custodie ou le soin", substitute "'parental responsibility', selon la Children (Guernsey and Alderney) Law, 2008, à l'égard",
- (d) in Article 11, for "la custodie ou le soin", substitute "'parental responsibility', selon la Children (Guernsey and Alderney) Law, à l'égard", and
- (e) in Article 12, for "the custody, charge or care of a girl under the age of sixteen years", substitute "parental responsibility in respect of a girl under the age of sixteen, in accordance with the Children (Guernsey and Alderney) Law, 2008".

**Loi sur l'Education Élémentaire et l'Instruction Obligatoire, 1924<sup>h</sup>.**

**3. In the Loi sur l'Education Élémentaire et l'Instruction Obligatoire, 1924 -**

- (a) in paragraph (5) of Article V, for ", au tuteur ou autre personne qui a la garde de le'enfant", substitute "ou autre personne qui a 'parental responsibility' à l'égard d'un enfant, selon la Children (Guernsey and Alderney) Law, 2008.",

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<sup>h</sup>

Ordres en Conseil Vol. VII, p. 256 and Vol. VIII, p. 382.

- (b) in paragraph (c) of Article XIII, for "tuteur ou gardien de l'enfant", substitute "autre personne ayant 'parental responsibility' à l'égard de l'enfant, selon la Children (Guernsey and Alderney) Law, 2008",
- (c) in Article XIV -
  - (i) immediately after "par le parent", insert "ou autre personne, qui a 'parental responsibility' à l'égard d'un enfant, selon la Children (Guernsey and Alderney) Law, 2008,", and
  - (b) immediately after "toutefois que le parent", insert ", ou autre personne ayant 'parental responsibility' à l'égard de l'enfant,",
- (d) in the second paragraph of Article XV for ", tuteur ou gardien", substitute "ou d'autre personne ayant 'parental responsibility' à l'égard de l'enfant, selon la Children (Guernsey and Alderney) Law, 2008", and
- (e) in the final clause to Article XVIII, immediately after "Tout parent", insert ", ou autre personne ayant 'parental responsibility' à l'égard de l'enfant, selon la Children (Guernsey and Alderney) Law, 2008,".

**Loi relative à l'enregistrement des Naissances et Décès dans l'Ile d'Auregny, 1925<sup>i</sup>.**

4. In the Loi relative à l'enregistrement des Naissances et Décès dans l'Ile d'Auregny, 1925 -

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<sup>i</sup> Ordres en Conseil Vol. VII, p. 417; Vol. XV, p. 46 and Vol. XX, p. 267.



- (a) in Article 1, for "et toute personne ayant soin de l'enfant", substitute "de l'enfant et toute personne qui a 'parental responsibility' à l'égard de l'enfant, selon la Children (Guernsey and Alderney) Law, 2008", and
- (b) in Articles 3 and 5, for "le tuteur de l'enfant", substitute "une autre personne qui a 'parental responsibility' à l'égard de l'enfant, selon la Children (Guernsey and Alderney) Law, 2008".

**Loi ayant rapport à l'Emploi de Femmes, de Jeunes Personnes et d'Enfants, 1926<sup>j</sup>.**

5. In Article II(b) of the Loi ayant rapport à l'Emploi de Femmes, de Jeunes Personnes et d'Enfants, 1926, immediately after "parent", wherever appearing, insert "or other person with parental responsibility under the Children (Guernsey and Alderney) Law, 2008".

**Loi relative à l'Entretien des Enfants Illégitimes, 1927<sup>k</sup>.**

6. In paragraph (2) of Article 5 of the Loi relative à l'Entretien des Enfants Illégitimes, 1927 -

- (a) for "person for the time being having custody of the child", substitute "person having parental responsibility in respect of the child under the Children (Guernsey and Alderney) Law, 2008", and
- (b) for "person having custody of the child.", substitute "person having parental responsibility in respect of the child.".

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<sup>j</sup> Ordres en Conseil Vol. VIII, p. 29.

<sup>k</sup> Ordres en Conseil Vol. VIII, p.130; Vol. XVI, p. 173; Vol. XXVIII, p. 418; Vol. XXIX, p. 337; Vol. XXXI, p. 171 and Vol. XXXIV, p. 129

**Loi ayant rapport à l'Asile des Enfants, 1928<sup>l</sup>.**

7. The Loi ayant rapport à l'Asile des Enfants, 1928 is repealed.

**Loi relative à la Vaccination des Enfants, 1929<sup>m</sup>.**

8. In the Article Général containing definitions at the commencement of the Loi relative à la Vaccination des Enfants, 1929, for "charge d'un enfant", substitute "'parental responsibility' à l'égard d'un enfant, selon la Children (Guernsey and Alderney) Law, 2008."

**Matrimonial Causes (Guernsey) Law, 1939<sup>n</sup>.**

9. In the Matrimonial Causes (Guernsey) Law, 1939 –

(a) in Article 43 –

(i) in the title omit "custody," and "etc.", and

(ii) in paragraph (1), for "custody, maintenance and education of the children and access to" substitute "maintenance of", and

(b) Article 43A is repealed.

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<sup>l</sup> Ordres en Conseil Vol. VIII, p. 238 and Vol. XI, p. 91.

<sup>m</sup> Ordres en Conseil Vol. VIII, p. 355.

<sup>n</sup> Ordres en Conseil Vol. XI, p.318, Vol. XII, p. 278; Vol. XIII, p. 38; Vol. XVII, p. 249; Vol. XXII, p. 102; Vol. XXIII, p. 489; Vol. XXVII, p. 99; Vol. XXXI, p. 171; Vol. XXXII, p. 85; Vol. XXXVI, p. 639; Vol. XXXVII, p. 308 and Orders in Council Nos. XI and XXXI of 2003.

**Family Allowances (Guernsey) Law, 1950<sup>o</sup>.**

**10. In the Family Allowances (Guernsey) Law, 1950 -**

- (a) in section 3(1) -
  - (i) in paragraph (a), immediately after "maintained by them", insert "or in respect of whom one of them has a residence order made under the Children (Guernsey and Alderney) Law, 2008 in his favour",
  - (ii) in paragraph (b), immediately after "maintained by him", insert "or in respect of whom he has a residence order in his favour",
  - (iii) in paragraph (c), immediately after "maintained by her", insert "or in respect of whom she has a residence order in her favour", and
  - (iv) in paragraph (d), immediately after "maintained by them, him or her", insert "or in respect of whom one of them has a residence order in his favour",
- (b) in section 11-
  - (i) paragraph (b) is repealed,
  - (ii) paragraph (d) is repealed,
  - (iii) for paragraph (e), substitute the following paragraph -

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<sup>o</sup> Ordres en Conseil Vol. XIV, p. 332; Vol. XVI, p. 280; Vol. XX, p. 63; Vol. XXI, p. 34; Vol. XXII, p. 318; Vol. XXIII, pp. 3 and 238; Vol. XXVI, p. 150 and Vol. XXVIII, p. 406; Order in Council No. VI of 1999.

- "(e) subject to any order by which he is placed out of the jurisdiction pursuant to Part XI of the Children (Guernsey and Alderney) Law, 2008, and", and
- (iv) for paragraph (f), substitute the following paragraph -
- "(f) subject to a community parenting order under the Children (Guernsey and Alderney) Law, 2008 and is placed other than with his parents", and
- (c) in section 20(1), immediately after "to all the circumstances", insert "and, for the avoidance of doubt, a person provides for a child where he has a residence order, made under the Children (Guernsey and Alderney) Law, 2008, in his favour in respect of that child".

**Marriage (Amendment) Law, 1951<sup>P</sup> and Marriage (Alderney) (Amendment) Law 1953<sup>Q</sup>.**

11. In the Marriage (Amendment) Law, 1951 and the Marriage (Alderney) (Amendment) Law 1953 -

- (a) in section 1(1) of both Laws -
- (i) for the words "the consent of the person or persons specified in the Schedule to the this Law", substitute "subject to the provisions of section 9 of the Children (Guernsey and Alderney) Law, 2008, the consent of a person with parental responsibility in respect of that

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<sup>P</sup> Ordres en Conseil Vol. XV, p. 200.

<sup>Q</sup> Ordres en Conseil Vol. XV, p. 382

child, or a court by way of a specific issue order under section 17 of that Law," , and

- (ii) the proviso is repealed,
- (b) sections 1(3) and 2 of both Laws are repealed, and
- (c) the Schedule to both Laws is repealed.

**Child Protection (Alderney) Law, 1953<sup>r</sup>.**

**12.** In the Child Protection (Alderney) Law, 1953 -

- (a) in section 6, for "be committed to the care of a relative of the child or some other fit person or institution, named by the Court (such relative, person or institution being willing to undertake the care) until the child attains the age of sixteen years, or for any shorter period", substitute "make –
  - (i) a residence order, or
  - (ii) a community parenting order,

as if the proceedings under this Law were family proceedings for the purposes of the Children (Guernsey and Alderney) Law, 2008",

- (b) in section 7(1), for "A person or institution to whose care a child has been committed by an order under section six of this Law shall", substitute "A person in whose favour a residence order has been made, or the Department where a community

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<sup>r</sup> Ordres en Conseil Vol. XV, p. 413.

parenting order has been made, in the circumstances described in the said section six, shall",

(c) in section 7(2), for paragraphs (a) and (b) substitute -

"(a) knowingly assists or induces, directly or indirectly, a child to escape -

(i) from a person in whose favour a residence order has been made in the circumstances described in the said section six, or

(ii) the Department where a community parenting order has been made in the circumstances described in the said section six, or

(b) knowingly harbours or conceals or prevents from returning to that person or the Department, a child who has escaped, or knowingly assists in so doing,"

(d) for section 7(4), substitute the following subsection -

"(4) An order may be made under the provisions of the last preceding subsection on the application of any person in whose favour a residence order has been made in the circumstances described in the said section six, or subsequently.", and

(e) in section 7(6), for the words "Where an order under the said section six to commit a child to the care of some person is made" substitute "Where a residence order is made, in the circumstances described in the said section six,".

**Adoption (Guernsey) Law, 1960<sup>s</sup>.**

13. In the Adoption (Guernsey) Law, 1960 -

(a) for section 5(3), substitute the following subsection -

"(3) The reference in paragraph (a) of subsection (1) of this section to a parent of an infant does not include a reference to any person other than a father or mother who has parental responsibility in respect of that infant under the Children (Guernsey and Alderney) Law 2008.", and

(b) for section 14(3), substitute the following subsection -

"(3) Where an adoption order is made in respect of an infant who is the subject of any order granting parental responsibility under the Children (Guernsey and Alderney) Law 2008, the latter order shall cease to have effect.".

**Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964<sup>t</sup>.**

14. In the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964 -

(a) in section 3(1)(d) -

(i) for "where the legal custody of any children of the marriage between the applicant and her husband has been committed to the applicant by the order" substitute "where the Court has made an order under section 17 of the Children (Guernsey and Alderney) Law, 2008 (referred to in this paragraph as a "section 17 order")", and

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<sup>s</sup> Ordres en Conseil Vol. XVIII, p. 192; Vol. XXI, p. 34 and Vol. XXIII, p. 238 and Order in Council No. VIII of 1997; No. XII of 2000 and No. III of 2001.

<sup>t</sup> Ordres en Conseil Vol. XIX, p. 241 and Vol. XXIV, p. 150.

- (ii) for "such child" substitute "child referred to in the section 17 order",
- (b) sections 3(1)(b), 5(b), 13(3) and (4) and 17 are repealed,
- (c) in section 13(2), for "for the time being has custody of the child", substitute "has parental responsibility under the Children (Guernsey and Alderney) Law 2008 in respect of the child", and
- (d) in section 18 -
  - (i) in subsection (4), for "the custody of the child for the time being", substitute "parental responsibility under the Children (Guernsey and Alderney) Law 2008 in respect of the child", and
  - (ii) in subsection (6), for "the custody of the child", substitute "parental responsibility under the Children (Guernsey and Alderney) Law 2008 in respect of the child".

**Children and Young Persons (Guernsey) Law, 1967<sup>u</sup>.**

**15.** In the Children and Young Persons (Guernsey) Law, 1967 -

- (a) sections 2 to 6, 7(1) and (2), 8(1) to (4) and (6), 10, 11(1) to (6), 12, 14, 16, 20 to 22, 23(2), 24, 26, 27, 28(4)(a) and (b), (9), (10) and (11)(a) and (c), 30 and 34 are repealed,

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<sup>u</sup> Ordres en Conseil Vol. XXI, p. 34; Vol. XXIII, pp. 3 and 238; Vol. XXIX, p 124; Vol. XXXI, p. 326 and Vol. XXXIII, p. 465; Order in Council No. XXIX of 1997 and No. III of 2001.



- (b) sections 1, 7(3) to (6), 8(5), 9, 11(7), 13, 15, 17, 18, 19, 28(1) to (3), (5) to (9) and (12), 29, 31, and 32 are repealed in respect of the islands of Guernsey, Alderney, Herm and Jethou,
- (c) section 33 is repealed in respect of the islands of Guernsey, Alderney, Herm and Jethou,
- (d) for section 7(4)(b), substitute -
  - "(b) sections 11(e) and (f) of the Family Allowances (Guernsey) Law, 1950 shall not have effect in relation to the child or young person.",
- (e) in section 23(1) for "the next succeeding subsection" substitute "section 11(1) of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 or are brought under the Children (Guernsey and Alderney) Law, 2008", and
- (f) in section 23(3) -
  - (i) for the words "the last preceding subsection", substitute "subsection (1)", and
  - (ii) omit ", with the necessary modifications,".

**Education (Guernsey) Law, 1970<sup>v</sup>.**

**16.** In the Education (Guernsey) Law, 1970 -

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<sup>v</sup> Ordres en Conseil Vol. XXII, p. 318 – there are amendments not relevant.

- (a) in section 1(1), for the definition of "parent", substitute -

"**parent**" means a person who has parental responsibility in respect of the child or young person in question," , and

- (b) sections 21(2) to (7) and 22 are repealed.

**States Children Board and Public Assistance (Amendment) (Guernsey) Law, 1970<sup>w</sup>.**

17. In the States Children Board and Public Assistance (Amendment) (Guernsey) Law, 1970, in the First Schedule, omit -

- (a) "The Law entitled "Loi ayant rapport à l'Asile des Enfants" registered on the twenty-fourth day of November, nineteen hundred and twenty-eight.", and
- (b) "The Children and Young Persons (Guernsey) Law, 1967.".

**Children and Young Persons (Amendment) (Guernsey) Law, 1971<sup>x</sup>.**

18. The Children and Young Persons (Amendment) (Guernsey) Law, 1971 is repealed.

**Supplementary Benefit (Guernsey) Law, 1971<sup>y</sup>.**

19. In the Supplementary Benefit (Guernsey) Law, 1971 -

- (a) in sections 19(4) and (6), immediately after "a person appointed to have custody of the child", insert "or a person having a relevant order ", and

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<sup>w</sup> Ordres en Conseil Vol. XXII, p. 521 and Vol. XXXII, p. 155.

<sup>x</sup> Ordres en Conseil Vol. XXIII, p. 3.

<sup>y</sup> Ordres en Conseil Vol. XXIII, p. 26 and Vol. XXVI, p. 292; Order in Council No. VI of 1999; Recueil d'Ordonnances Tome XXIV, p. 468; Tome XXX, p. 25.

- (b) immediately after section 19(6) insert the following subsection

"(7) For the purposes of subsections (4) and (6), "**relevant order**" means an order made under section 17 of the Children (Guernsey and Alderney) Law 2008."

**Child Protection (Guernsey) Law, 1972<sup>z</sup>.**

**20.** In the Child Protection (Guernsey) Law, 1972 -

- (a) in section 1(1), the definition of "supervision order" is repealed,

- (b) in section 15(6) -

- (i) for paragraph (a), substitute the following paragraph -

"(a) there has been made against him an order under -

- (i) Part II of this Law removing a child from his care,

- (ii) section 15(5) refusing his registration under Part III of this Law,

- (iii) section 19 cancelling his registration under Part III of this Law or the registration under that Part of any premises occupied by him,

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<sup>z</sup> Ordres en Conseil Vol. XXIII, p. 238 and Vol. XXXVII, p. 45 and Order in Council No. III of 2001.

- (iv) the Children and Young Persons (Guernsey) Law, 1967, by virtue of which a child was removed from his care, or
- (v) the Children (Guernsey and Alderney) Law, 2008;" , and
- (ii) for paragraph (b), substitute the following paragraph -
  - "(b) he has been convicted of an offence specified in the First Schedule to the Children and Young Persons (Guernsey) Law, 1967, in respect of a child or has been placed on probation or discharged conditionally for any such offence;" .

**Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978<sup>aa</sup>.**

21. In the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(5), Parts II and III (save sections 24, 25 and 26) and the Schedule are repealed.

**Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979<sup>bb</sup>.**

22. In the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979 -

- (a) section 1(g) is repealed, and
- (b) in paragraph 10(1) of the Schedule, in the definition of "relevant order", items (a) and (c) are repealed.

**Education (Amendment) (Guernsey) Law, 1987<sup>cc</sup>.**

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<sup>aa</sup> Ordres en Conseil Vol. XXVI, p. 264 and Vol. XXXI, p. 171.

<sup>bb</sup> Ordres en Conseil Vol. XXVII, p. 99 and Vol. XXXI, p. 171.

23. Paragraph 5 of the Third Schedule to the Education (Amendment) (Guernsey) Law, 1987 is repealed.

**Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987<sup>dd</sup>.**

24. In section 9 of the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987, immediately after the words "mother, father or guardian", insert "or other person who has parental responsibility in respect".

**Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988<sup>ee</sup>.**

25. In the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 -

- (a) sections 7 to 9 and 11 to 14 are repealed,
- (b) in section 10(1), for "section 7(1)(i) in respect of the custody" of a child" substitute "section 17 of the Children (Guernsey and Alderney) Law 2008 in respect of a child, or any order varying such an order,"
- (c) in section 10(2), for "an order under section 9(1) committing the care of a child to the Children Board" substitute "a community parenting order under the Children (Guernsey and Alderney) Law 2008",
- (d) in section 18(1), omit "or has made an interim custody order within the meaning of subsection (2) (other than an interim custody order in respect of an illegitimate child on an application under section 7(1)(a)),",

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<sup>cc</sup> Ordres en Conseil Vol. XXX, p. 179.

<sup>dd</sup> Ordres en Conseil Vol. XXX, p. 145 and Order in Council No. VIII of 1996.

<sup>ee</sup> Ordres en Conseil Vol. XXXI, p. 171 and Vol. XXXIV, p. 129, Order in Council No. XXIV of 1994 and No. I of 1995.

- (e) section 18(2) is repealed,
- (f) in section 18(4), omit "or an interim custody order",
- (g) in section 18(5), omit "or interim custody order",
- (h) in section 20, subsections (1), (2), (3) and (4) are repealed,
- (i) in section 21, subsection (1)(c) is repealed,
- (j) in section 23(1), omit "or interim custody order",
- (k) in section 23(2), omit -
  - (i) "25," and
  - (ii) "or interim custody order",
- (l) in section 30 -
  - (i) in subsection (2), omit "and interim custody orders",
  - (ii) subsection (4) is repealed, and
  - (iii) in subsection (5) -
    - (A) omit "12(2), 13(3)," and "25," and
    - (B) immediately after "20", insert "(5)",
- (m) in section 31 -

- (i) subsections (2) and (7) are repealed, and
- (ii) in subsection (3), omit "or (2)",
- (n) in section 35, the definition of "interim custody order" is repealed, and
- (o) in Schedule 1, the provisions relating to the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 are repealed.

**The Guardianship of Minors (Alderney) Law, 1990<sup>ff</sup>.**

**26.** In the Guardianship of Minors (Alderney) Law, 1990 -

- (a) sections 1 to 12 are repealed,
- (b) in section 13(1) -
  - (i) omit "in relation to the custody or upbringing of a minor who is illegitimate, and", and
  - (ii) for "such minor" (where first appearing in section 13(1)) substitute "a minor who is illegitimate",
- (c) sections 13(3), (4) and (6) are repealed, and
- (d) in section 17(1), the definition of "maintenance" is repealed.

**Domestic Proceedings and Magistrate's Court (Amendment) (Guernsey) Law, 1992<sup>gg</sup>.**

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<sup>ff</sup> Ordres en Conseil Vol. XXXII, p. 177.

<sup>gg</sup> Ordres en Conseil Vol. XXXIV, p. 129.

27. In the Domestic Proceedings and Magistrate's Court (Amendment) (Guernsey) Law, 1992, sections 1(d) and (f) are repealed.

**Housing (Control of Occupation) (Guernsey) Law, 1994.**

28. In the Housing (Control of Occupation) (Guernsey) Law, 1994 -

- (a) in section 71(1) after the definition of "owner" insert the following definition -

""a placement agency" has the meaning given by section 78(1) of the Children (Guernsey and Alderney) Law, 2008;", and

- (b) immediately after section 71(4)(b) insert the following paragraph -

"(c) a person who is described in section 10(2)(d), (e), (f) or (k) or deemed to be described in section 10(2)(d) or (e) by virtue of section 10(2)(m) shall be deemed to be ordinarily resident in Guernsey during any period throughout the whole of which he is not resident in Guernsey as a result of arrangements made by a placement agency in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008 and that person becomes ordinarily resident in Guernsey within a period of six months immediately following the date on which any such arrangements come to an end without being replaced by any further similar arrangements for placement outside Guernsey.".

**Children and Young Persons (Amendment) (Guernsey) Law, 1997<sup>hh</sup>.**

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<sup>hh</sup>

Order in Council No. XXIX of 1997.



29. The Children and Young Persons (Amendment) (Guernsey) Law, 1997 is repealed.

**Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997<sup>ii</sup>.**

30. The Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997 is repealed.

**Children and Young Persons (Amendment) (Guernsey) Law, 2000<sup>jj</sup>.**

31. Section 1 of the Children and Young Persons (Amendment) (Guernsey) Law, 2000 is repealed.

**Tattooing, Piercing, Acupuncture and Electrolysis (Guernsey and Alderney) Law, 2000<sup>kk</sup>.**

32. In the Tattooing, Piercing, Acupuncture and Electrolysis (Guernsey and Alderney) Law, 2000, in section 8(3)(b), immediately after "parent or guardian of", insert ", or other person who has parental responsibility in respect of,".

PART II

ORDINANCES

**Ordonnance relative à la Vaccination des Enfants 1869<sup>ll</sup>.**

1. The Ordonnance relative à la Vaccination des Enfants 1869 is repealed.

**Ordonnance autorisant la nomination par le Magistrat d'un Tuteur spécial à soutenir ou défendre Procès relatif à l'entretien d'un Enfant Illégitime, 1930<sup>mm</sup>.**

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ii Order in Council No. IX of 1997.

jj Order in Council No. III of 2001.

kk Order in Council, No. V of 2000.

ll Recueil d'Ordonnances Tome IV, p. 97.

mm Recueil d'Ordonnances Tome VIII, p. 62.

2. The Ordonnance autorisant la nomination par le Magistrat d'un Tuteur spécial à soutenir ou défendre Procès relatif à l'entretien d'un Enfant Illégitime, 1930 is repealed.

**Children and Young Persons (Regulation of Boarding Out) Ordinance, 1968<sup>nn</sup>.**

3. The Children and Young Persons (Regulation of Boarding Out) Ordinance, 1968 is repealed.

**Children and Young Persons (Secure Accommodation) Ordinance, 1997<sup>oo</sup>.**

4. The Children and Young Persons (Secure Accommodation) Ordinance, 1997 is repealed.

PART III  
OTHER INSTRUMENTS

**The Children and Young Persons (Forms) Rules, 1968<sup>pp</sup>.**

1. The Children and Young Persons (Forms) Rules, 1968 are revoked.

**School Attendance Order (Guernsey) Regulations, 1970<sup>qq</sup>.**

2. In the Schedule to the School Attendance Order (Guernsey) Regulations, 1970, for the footnote substitute the following footnote -

"(\* In this Order the expression "parent" means a person who has parental responsibility in respect of the child.)".

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<sup>nn</sup> Recueil d'Ordonnances Tome XV, p. 328.

<sup>oo</sup> Ordinance No. XXIII of 1997.

<sup>pp</sup> Order of the Royal Court No. II of 1968.

<sup>qq</sup> Guernsey Statutory Instrument No. 35 of 1970.

SCHEDULE 2  
SAVINGS AND TRANSITIONAL PROVISIONS

PART I  
PUBLIC LAW ORDERS

**Special care orders.**

1. A special care order which is in force immediately before the commencement of the Law shall, on the commencement of the Law, become a community parenting order with leave to place the child out of the jurisdiction.

**Place of safety, fit person, supervision and secure accommodation orders.**

2. A place of safety order, fit person order, supervision order or secure accommodation order which is in force immediately before the commencement of the Law shall, on the commencement of the Law, remain in force and continue to have effect as if -

(a) in the case of a place of safety order, fit person order (subject to paragraph 5) and supervision order, the provisions of the Children and Young Persons (Guernsey) Law, 1967 referred to in paragraph 15 of Part I of Schedule 1 were in force and continued to have effect, and

(b) in the case of a secure accommodation order -

(i) the Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997, and

(ii) the Children and Young Persons (Secure Accommodation) Ordinance, 1997,

were in force and continued to have effect,

until the date upon which the order would have expired but for the repeal of those provisions and those enactments under section 3, unless the order is discharged or revoked prior to that date.

**Discharge etc. of supervision orders saved under paragraph 2.**

3. Where a supervision order to which paragraph 2 relates (other than a supervision order made in criminal proceedings) is discharged or revoked -

- (a) the child's case may be referred to the Children's Convenor,  
or
- (b) a relevant court may make an order under Part IV of the Law.

**Applications pending under section 3 of Children and Young Persons (Guernsey) Law, 1967.**

4. (1) Where an application for any order under section 3 of the Children and Young Persons (Guernsey) Law, 1967 is pending on the commencement of the Law, the relevant court -

- (a) within 2 months of the commencement of the Law or, where not reasonably practicable as soon as possible thereafter, shall  
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  - (i) consider representations as to whether the conditions and criteria set out, or referred to, in section 49 of the Law are met, and
  - (ii) make such order, or take such other action, under the Law as it thinks fit, and

- (b) subject to subparagraph (2) may, where it thinks fit, make any interim order that the court could have made under the Children and Young Persons (Guernsey) Law, 1967 and any order so made shall have effect as if the provisions of that Law were in force and continued to have effect, irrespective of their repeal under section 3 of this Ordinance.

(2) The power under subparagraph (1)(b) shall cease to be exercisable, and any orders made in exercise of the power shall cease to have effect, on 30 June 2010.

**Fit person orders saved under paragraph 2.**

5. (1) Where a fit person order to which paragraph 2 relates has been made and remains in force in respect of a child -

- (a) in favour of the Department, the Department shall have parental responsibility in respect of the child as if the child were subject to a community parenting order, or
- (b) in favour of an individual, that individual shall have parental responsibility in respect of the child to the same extent as the Department would have if the child were subject to a community parenting order.

(2) An application to discharge or revoke an order referred to in subparagraph (1)(a) shall be made in the same manner as an application to discharge a community parenting order under section 52(2) of the Law.

(3) The relevant court may, upon review, and as an alternative to the discharge or revocation of, an order referred to in subparagraph (1)(a) -

- (a) convert the order into a community parenting order,

(b) make any other order which it may make under the Law, or

(c) refer the matter to the Children's Convenor.

**Conditions attached to fit person order saved under paragraph 2.**

6. A condition which has been attached to a fit person order to which paragraph 2 relates may be discharged, revoked or varied by a relevant court.

**Orders under sections 8(1) and 9(1) of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988.**

7. (1) An order under section 8(1) of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 which is in force immediately before the commencement of the Law shall, on the commencement of the Law, remain in force and continue to have effect as if -

(a) the Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997, and

(b) the Children and Young Persons (Secure Accommodation) Ordinance, 1997,

were in force and continued to have effect, until the date upon which the order would have expired but for the repeal of those enactments under section 3, unless the order is discharged or revoked prior to that date.

(2) Where an order to which subparagraph (1) relates is discharged or revoked -

(a) the child's case may be referred to the Children's Convenor,  
or

(b) a relevant court may make an order under Part IV of the Law

(3) An order under section 9(1) of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 which is in force immediately before the commencement of the Law shall, on the commencement of the Law, become a community parenting order.

### **Interpretation of this Part.**

8. For the purposes of this Part -

"**community parenting order**" has the meaning given by section 48 of the Law,

"**fit person order**" means an order made under section 3(3)(b) of the Children and Young Persons (Guernsey) Law, 1967 and, for the avoidance of doubt, includes any interim order committing a child to the care of any fit person made under section 24 of that Law,

"**place of safety order**" means a direction given under section 3(1)(b) of the Children and Young Persons (Guernsey) Law, 1967,

"**secure accommodation order**" means any order made under the Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997 authorising a person to be kept in secure accommodation,

"**special care order**" has the meaning given by section 1(1) of the Children and Young Persons (Guernsey) Law, 1967, and

"**supervision order**" mean an order made under section 3(3)(d) of the Children and Young Persons (Guernsey) Law, 1967.

## **PART II**

## PRIVATE LAW ORDERS

### **Private law orders in force upon commencement of Law.**

1. A private law order (including an interim order) relating to a child, which is in force immediately before the commencement of the Law shall, on the commencement of the Law, remain in force and continue to have effect -

- (a) subject to the provisions of this Part, and
- (b) as if, where the order is made under an enactment repealed or amended under this Ordinance, the enactment so repealed or amended were in force and continued to have effect,

until the date upon which the order would, where the order is made under an enactment, have expired but for the repeal or amendment of the enactment under this Ordinance, unless the order is varied, discharged or revoked by the relevant court prior to that date.

### **Parental responsibility and orders under matrimonial laws saved under paragraph 1.**

2. (1) Where an order to which paragraph 1 relates has been made under the matrimonial laws and the mother and father of any child to which the order relates -

- (a) were married to one another at the time of the child's birth,
- (b) have subsequently married each other, or
- (c) subsequently marry each other,

then both mother and father shall have parental responsibility in respect of that child.

(2) Any application to vary, discharge or revoke an order referred to in subparagraph (1) shall be made in the same manner as an application to vary or discharge a section 17 order.



**Orders for access under the matrimonial laws saved under paragraph 1.**

3. Where an order for access to a child to which paragraph 1 relates has been made under the matrimonial laws, the person in whose favour the order has been made -

- (a) may apply for a section 17 order in respect of the child, as if that person were a person in whose favour a contact order relating to that child had been made, and
- (b) shall, for the purposes of section 50(1)(b) of the Law, be treated as if he were a person in whose favour a contract order, in respect of the child, is in force.

**Parental responsibility where order made to person other than a parent under enactment other than guardianship laws.**

4. Where an order to which paragraph 1 relates has been made, under any enactment other than the guardianship laws, giving a person custody, or care and control, of a child of whom that person is not a parent, that person, in addition to the parents of the child, shall have parental responsibility in respect of the child in question.

**Parental responsibility of tuteurs and guardians.**

5. (1) A person who, upon the commencement of the Law, holds appointment as tuteur of a child with full powers under the customary law, shall have parental responsibility in respect of that child.

(2) A guardian, whose appointment as such is effective upon the commencement of the Law, shall have parental responsibility in respect of the child to whom the appointment relates.

**Interpretation of this Part.**

6. For the purposes of this Part -

(a) **"private law order"** means an order -

- (i) in respect of access or custody made under the matrimonial laws,
- (ii) in respect of access or guardianship, made under the guardianship laws,
- (iii) giving a person custody, or care and control, of a child, or
- (iv) appointing a person as "tuteur" under the customary law,

(b) **"the matrimonial laws"** means -

- (i) the Matrimonial Causes (Guernsey) Law, 1939,
- (ii) the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, and
- (iii) the Separation, Marriage and Affiliation Proceedings (Alderney) Law, 1964,

(c) **"the guardianship laws"** means -

- (i) the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, and
- (ii) the Guardianship of Minors (Alderney) Law, 1990, and

- (d) a "section 17 order" has the same meaning as under the Law.

### PART III

#### MISCELLANEOUS

Where immediately before the commencement of the Law, the Juvenile Court (as constituted in accordance with section 4 of the Juvenile Court (Guernsey) Law, 1989<sup>rr</sup>) has heard evidence in, or received an application concerning, a matter relating to a child, it may, notwithstanding the commencement of the Law, sit as so constituted to -

- (a) hear any further evidence, application or representation in that matter, and
- (b) make any order which may be made by the Juvenile Court under the Law.

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<sup>rr</sup> Ordres en Conseil Vol. XXXI, p. 326.