

ORDER IN COUNCIL

VIII

1983

ratifying a Projet de Loi

ENTITLED

The Preferred Debts (Guernsey) Law, 1983

(Registered on the Records of the Island of Guernsey
on the 5th day of July, 1983.)



1983

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of July, 1983 before Sir Charles Frossard, Kt., Bailiff; present:—Stanley Walter Gavey, Esquire, O.B.E., Albert Richard McCartney Straw, Esquire, Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Donald Pescott Plummer, Esquire, Sydney Haydn Heard, Esquire, M.B.E., Brian Ernest Herbert Joy, Esquire, Charles Henry Hodder, Esquire, O.B.E., Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode and Geoffrey Ernest Le Page, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 22nd day of June, 1983, ratifying a *Projet de Loi* entitled "The Preferred Debts (Guernsey) Law, 1983", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney for registration on the records of that Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 22nd day of June 1983

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 20th day of May 1983 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

1. That, in pursuance of their Resolution of the 26th day of March 1981 the States of Deliberation at a meeting held on the 28th day of July 1982 approved a Bill or “Projet de Loi” entitled “The Preferred Debts (Guernsey) Law, 1983”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 6th day of October 1982 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the said Bill or “Projet de Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanc-

tion to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Preferred Debts (Guernsey) Law, 1983", and to order that the same shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty that it may be advisable for your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Alderney, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. E. Leigh.

PROJET DE LOI

ENTITLED

The Preferred Debts (Guernsey) Law, 1983

Arrangement of Sections

Section

1. Preferred debts.
2. Payment of preferred debts in compulsory winding-up of a company in Guernsey.
3. Payment of preferred debts in compulsory winding-up of a company in Alderney.
4. Goods subject to tacit hypothecation.
5. Amendment to the Income Tax Law of 1975.
6. Costs, etc.
7. Repeals.
8. Savings.
9. Interpretation.
10. Extent.
11. Citation.

SCHEDULE Limitations on privileges of landlords.

PROJET DE LOI

ENTITLED

The Preferred Debts (Guernsey) Law, 1983

THE STATES, in pursuance of their Resolution of the twenty-sixth day of March, nineteen hundred and eighty-one, 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, Alderney, Herm and Jethou.

Preferred
debts.

1. (1) In the distribution of the property of a person whose affairs have been declared to be in a state of "désastre" at a meeting of his arresting creditors held before a Jurat as Commissioner of the Court or in the winding-up of a company which is insolvent, there shall be paid—

- (a) in priority to all other debts, any debt owing to a landlord by his tenant in respect of the rent of any immovable property to the extent that such debt is secured by goods present in or upon that immovable property which are subject to tacit hypothecation by operation of law (in the French language "tacite hypothèque") for the payment of that rent:

Provided that, where the rent is payable at any of the intervals set out in the first column of the Schedule to this Law, such priority shall not apply to rent payable for any period in excess of the period set out in relation to such interval in the second column of the said Schedule.

(b) in priority to all debts other than debts to which paragraph (a) of this sub-section relates:—

- (i) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the debtor during the four months immediately preceding the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;
- (ii) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the insolvency of the debtor or the winding-up of a company;
- (iii) the amount of any income tax deducted, in accordance with the provisions of section eighty-one A of the Income Tax (Guernsey) Law, 1975, as amended(a), by an employer from the emoluments of an employee during the twelve months immediately preceding the relevant date and not paid by the employer in accordance with the provisions of the said section eighty-one A;

(a) Ordres en Conseil Vol. XXV, p. 124; No. VII of 1979.

- (iv) the amount of any primary Class I contribution deducted, in accordance with the provisions of section thirteen of the Social Insurance (Guernsey) Law, 1978, as amended^(b), by an employer from the earnings of an employed person during the twelve months immediately preceding the relevant date and not paid by the employer in accordance with the requirements of the said section thirteen.

(2) Notwithstanding the provisions of subparagraph (i) of paragraph (b) of the last preceding subsection the sum to which priority is to be given under those provisions shall not, in the case of any one claimant, exceed fifteen hundred pounds or such other sum as the States may, from time to time, by Ordinance prescribe:

Provided that where a claimant under the said subparagraph (i) of paragraph (b) has entered into a contract for the payment of a portion of his wages in a lump sum at the end of a period of employment whether by way of bonus or otherwise he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, apportioned to the time of service up to the relevant date.

- (3) Where any payment has been made —
 - (a) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary; or

(b) Ordre en Conseil No. VII of 1978; No. VII of 1981; No. I of 1982.

- (b) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a distribution of property or a winding-up to which subsection (1) of this section relates have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the distribution of property or in the winding-up has been diminished by reason of the payment having been made.

- (4) The debts to which paragraph (b) of subsection (1) of this section relates shall rank equally amongst themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

- (5) Subject to the provisions of section seventy-seven of the Guernsey Companies Law or of section eleven of the Alderney Companies Law, as the case may require, in respect of distributions by the liquidator of a company which is being wound up by the Court and subject to the retention of such sums as may be necessary for the costs of administration or otherwise the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

- (6) For the purposes of this section —
 - (a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;
 - (b) the expression “accrued holiday remuneration” includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Law), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday;
 - (c) the expression “the relevant date” means—
 - (i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
 - (ii) in any case of a company being wound up where the foregoing sub-paragraph does not apply, the date of the passing of the Special Resolution for the winding-up of the company; and

(iii) in the case of a debtor whose affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Jurat as Commissioner of the Court—

(aa) for the purposes of sub-paragraph (i) (which relates to wages or salary) and sub-paragraph (ii) (which relates to accrued holiday remuneration) of paragraph (b) of subsection (1) of this section, the date of such declaration or, where a clerk, servant, workman or labourer has ceased to be employed by such debtor within the twelve months immediately preceding the date of such declaration, the date of the cessation of the employment, whichever is the earlier;

(bb) for the purposes of sub-paragraph (iii) (which relates to amounts deducted in respect of income tax) and sub-paragraph (iv) (which relates to amounts deducted in respect of Social Insurance contributions) of the said paragraph (b), the date of such declaration.

2. When at any time in the compulsory winding-up of a company under the provisions of the Guernsey Companies Law the liquidator has realised sufficient assets to meet, in whole or in part, the preferred debts of the company he may, notwithstanding that he has not realised all the assets of the company, cause an action to be brought before

Payment of preferred debts in compulsory winding-up of a company in Guernsey.

the Court in accordance with Article seventy-seven of the Guernsey Companies Law; and thereafter the procedure set out in the said Article shall apply in relation to any such action as aforesaid save that the Commissioner shall not be obliged to verify the respective demands and preferences of any creditor in respect of any debt which is not a preferred debt.

Payment
of preferred
debts in
compulsory
winding-up
of a
company in
Alderney.

3. When at any time in the compulsory winding-up of a company under the provisions of the Alderney Companies Law the liquidator has realised sufficient assets to meet, in whole or in part, the preferred debts of the company he may, not withstanding that he has not realised all the assets of the company, cause an action to be brought before the Court in accordance with section eleven of the Alderney Companies Law; and thereafter the procedure set out in the said section shall apply in relation to any such action as aforesaid save that the Commissioner shall not be obliged to verify the respective demands and preferences of any creditor in respect of any debt which is not a preferred debt.

Goods sub-
ject to
tacit hypo-
thecation.

4. (1) For the avoidance of doubt it is hereby declared that any goods present in or upon immovable property which appear to be owned by the tenant of that property are subject to tacit hypothecation by operation of law:

Provided that, notwithstanding any rule of law or practice to the contrary, such goods shall not be subject to tacit hypothecation if it is proved, in accordance with the succeeding provisions of this section, that they are wholly owned by a person who is not the tenant of that property or that they are jointly owned by several persons none of whom is the tenant of that property.

(2) Where any goods found upon the property of a landlord and appearing to be owned by the tenant of that property have been seized in execution of a judgment in favour of the landlord for rent owing to him in respect of that property:—

(a) in the Island of Guernsey, Her Majesty's Sheriff shall cause to be published in *La Gazette Officielle* on not less than two occasions; or

(b) in the Island of Alderney, the Clerk of the Court of Alderney shall cause to be so published in *La Gazette Officielle* and shall cause to be affixed to the notice boards outside the Court House and the gate of the Parish Church of that Island;

a notice that goods found upon the said property have been seized in execution of a judgment against the tenant and that any person other than the tenant who claims to be the owner or joint owner of any of those goods may, within the fourteen days next following the first publication of the notice, make application to the Court to determine the lawful ownership of such goods.

(3) In any proceedings under the last preceding subsection the burden of proving the lawful ownership of any goods shall lie upon the person who claims to be the lawful owner or joint owner of those goods.

(4) Upon the hearing of an application made under subsection (2) of this section the Court may determine the ownership of any goods to which the application relates and may make such order as to the disposal of those goods as it deems to be just in all the circumstances of the case.

(5) No goods to which this section relates shall be sold —

- (a) where no application is made to the Court within the period specified by notice as aforesaid, before the expiration of the said period;
- (b) where an application is made within the said period, until such application has been heard and determined.

Amend-
ment to
the Income
Tax Law
of 1975.

5. Subsection (10) of section eighty-one A of the Income Tax (Guernsey) Law, 1975, as amended, is hereby repealed and the following subsection is hereby substituted therefor:—

“ (10) In the event of any proceedings “en désastre” in respect of the personal property of an employer or of the compulsory or voluntary winding-up of the affairs of an employer who is a body corporate, the amount of any tax deducted by the employer from the emoluments of an employee in accordance with the provisions of this section which has not been paid shall rank for payment in accordance with the provisions of the Preferred Debts (Guernsey) Law, 1983.”.

Costs, etc.

6. In any proceedings relating to the distribution of the property of a person whose affairs have been declared to be in a state of “désastre” or in the winding-up of a company which is insolvent, the Court may, notwithstanding any rule of law or practice to the contrary, make such order as to the payment of costs or the fees and expenses of the liquidator and as to the priority, if any, to be given to such costs, fees and expenses as the Court may consider to be just.

7. The Law entitled "Loi au sujet des Privilèges pour Loyers de Maisons en cas de Faillite ou de Déconfiture" registered on the fourth day of January, eighteen hundred and ninety(c), and the Ordinance entitled "Loi relative au Sujet des Privilèges pour loyer de Maisons en cas de faillite ou déconfiture" annexed to, and ratified by, an Order of Her Majesty in Council of the nineteenth day of May, eighteen hundred and ninety-nine, and registered on the seventeenth day of June, eighteen hundred and ninety-nine(d), are hereby repealed. Repeals.

8. (1) The provisions of this Law shall not apply to any proceedings commenced in any court or to the winding-up of a company in which a liquidator has been appointed before the coming into force of this Law and for the purposes of any such proceedings or winding-up the enactments repealed by this Law shall continue to have effect. Savings.

(2) In any proceedings commenced in any court after the coming into force of this Law, or in the winding-up of a company in which a liquidator has not been appointed before the coming into force of this Law, the priorities as between the creditors in relation to any debt incurred before the coming into force of this Law shall be determined as though this Law had not been enacted.

9. (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:— Interpretation.

"the Alderney Companies Law" means the Companies (Amendment) (Alderney) Law, 1962(e);

"the Court" means —

(c) Ordres en Conseil Vol. II, p. 318.

(d) Ordres en Conseil Vol. III, p. 141.

(e) Ordres en Conseil Vol. XIX, p. 33.

(a) in relation to the Islands of Guernsey, Herm and Jethou, the Royal Court sitting as an Ordinary Court;

(b) in relation to the Island of Alderney, the Court of Alderney;

“goods” means any movable goods but does not include any money or security;

“the Guernsey Companies Law” means the Law entitled “Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée” registered on the twenty-first day of March, nineteen hundred and eight(f);

“preferred debt” means a debt to which subsection (1) of section one of this Law relates.

(2) Except in so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as amended, extended, repealed or replaced by or under any other enactment.

(3) The Interpretation (Guernsey) Law, 1948(g) shall apply to the interpretation of this Law throughout the Islands of Guernsey, Alderney, Herm and Jethou.

Extent.

10. (1) The provisions of this Law, other than the provisions of sections two and three thereof, shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

(f) Ordres en Conseil Vol. IV, p. 178; Vol. X, p. 298; Vol. XVII, p. 444; Vol. XX, p. 17; Vol. XXIV, p. 14.
 (g) Ordres en Conseil Vol. XIII, p. 355.

(2) The provisions of section two of this Law shall have effect in the Islands of Guernsey, Herm and Jethou.

(3) The provisions of section three of this Law shall have effect in the Island of Alderney.

11. This Law may be cited as the Preferred Debts Citation. (Guernsey) Law, 1983.

Section 1(1) (a)

SCHEDULE

Limitations on Privileges of Landlords

<i>Intervals at which rent is payable.</i>	<i>Amount of rent to which the privilege of the landlord extends.</i>
Weekly or at longer intervals of less than one month.	Six weeks and the current week.
Monthly or at longer intervals of less than one quarter.	Three months and the current month.
Quarterly or at longer intervals of less than half a year.	Six months and the current quarter.
Half yearly or at any intervals of longer than a half year.	One year.

K. H. TOUGH,

Her Majesty's Greffier.