

ORDER IN COUNCIL

**XXV
2009**

ratifying a Projet de Loi

ENTITLED

The Digital Switchover (Disclosure of Information) (Guernsey and Alderney) Law, 2009

(Registered on the Records of the Island of Guernsey
on the 7th December, 2009.)



2009

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

7th day of December, 2009 before Sir Geoffrey Rowland, Bailiff; present:- Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, and Michael John Tanguy Esquires, Susan Mowbray, The Reverend Peter Gerald Lane, Barbara Jean Bartie, and David Osmond Le Conte, Esquire, Stephen Murray Jones, Esquire, Claire Helen Le Pelley, Constance Helyar-Wilkinson, and Terry George Snell Esquire, Jurats

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 17th November 2009 approving and ratifying a Projet de Loi entitled “The Digital Switchover (Disclosure of Information) (Guernsey and Alderney) Law, 2009”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED: -

1. That the said Order in Council be registered on the records of this Island;
and
2. 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 Greffier of the Court of Alderney for registration on the records of that Island.



At the Court at Buckingham Palace

THE 17th DAY OF NOVEMBER 2009

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 29th April 2009, the States of Deliberation at a meeting on 24th June 2009 approved a *Projet de Loi* entitled the Digital Switchover (Disclosure of Information) (Guernsey and Alderney) Law, 2009 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 22nd July 2009 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Alderney. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Digital Switchover (Disclosure of Information) (Guernsey and Alderney) Law, 2009, and to order that it shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Alderney, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Judith Simpson

PROJET DE LOI

ENTITLED

The Digital Switchover (Disclosure of Information) (Guernsey and Alderney) Law, 2009

THE STATES, in pursuance of their Resolution of the 29th April, 2009^a, 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.

Disclosure of information.

1. (1) The Social Security Department may, at the request of a relevant person, supply a relevant person with social security information for use (by the person to whom it is supplied or by another relevant person) in connection with switchover help functions.

(2) The Health and Social Services Department and the Housing Department may, at the request of a relevant person, supply a relevant person with care home residency information for use (by the person to whom it is supplied or by another relevant person) in connection with switchover help functions.

(3) The Guernsey Blind Association may, at the request of a relevant person, supply a relevant person with visual impairment information for

^a Article X of Billet d'État No. XI of 2009.

use (by the person to whom it is supplied or by another relevant person) in connection with switchover help functions.

(4) Any department or body or any parochial officer or other person may, at the request of a relevant person, supply a relevant person with information of a prescribed description for use (by the person to whom it is supplied or by another relevant person) in connection with switchover help functions where that department, body, parochial officer or other person is prescribed to supply such information.

(5) In this Law "**relevant person**" means -

- (a) the BBC,
- (b) any company in respect of which any one or more of the following -
 - (i) the BBC,
 - (ii) the Secretary of State, or
 - (iii) a nominee of the BBC or the Secretary of State,
 hold at least 51% of the issued ordinary share capital or possess at least 51% of the voting rights, or
- (c) any person who is engaged by the BBC, the Secretary of State or any company falling within paragraph (b) to provide any service connected with switchover help functions, to carry out a switchover help function or to

carry out any function connected with switchover help functions.

- (6) In this Law "**switchover help functions**" means -
- (a) the identification of persons who may be eligible for help under a switchover help scheme,
 - (b) making contact with such persons with a view to the provision of such help, and
 - (c) the establishment of any person's entitlement to such help.

Kinds of information referred to in section 1.

2. (1) This section applies for the purposes of section 1.

(2) "**Social security information**" means information of a prescribed description held by the Social Security Department (or on its behalf) and obtained as a result of, or for the purpose of, the exercise of that Department's functions including, without limitation, its functions under -

- (a) the Supplementary Benefit (Guernsey) Law, 1971^b,

^b Ordres en Conseil Vol. XXIII, p. 26; amended by Vol. XXVI, p. 292; Vol. XXXI, p. 278, Order in Council No. VI of 1999 and as amended by Ordinance No. XIV of 1993 and as varied by Ordinance No. IX of 2005.

- (b) the Social Insurance (Guernsey) Law, 1978^c,
- (c) the Attendance and Invalid Care Allowances (Guernsey) Law, 1984^d, and
- (d) the Long-term Care Insurance (Guernsey) Law, 2002^e.

(3) **"Care home residency information"** means information of a prescribed description held by, or on behalf of -

- (a) the Health and Social Services Department and obtained as a result of, or for the purpose of, the exercise of its functions in relation to care homes, or
- (b) the Housing Department and obtained as a result of, or for the purpose of, the exercise of its functions in relation to care homes.

^c Ordres en Conseil Vol. XXVI, p. 292; amended by Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; No. V of 1990; No. XII of 1993; No. V of 1994, Nos. VI and XIII of 1995; No. I of 1998; No. VI of 1999; No. X of 2000; No. IX of 2001; No XXIV of 2003 and No. XVIII of 2007 and by Ordinance No. XIV of 1993.

^d Ordres en Conseil Vol. XXVIII, p. 353; amended by Vol. XXIX, p. 198; No. XIV of 1991; No. X of 1993 and No. VI of 1999; and No. X of 2003 and as amended by Recueil d'Ordonnances Tome XXVI, p. 177 and by Ordinance No. XLII of 2008.

^e Order in Council No. XXIII of 2002 as amended by Ordinance No. XLII of 2007.

(4) **"Visual impairment information"** means information of a prescribed description about persons who are registered as blind or partially sighted in a register maintained by or on behalf of the Guernsey Blind Association.

Offences.

3. (1) A relevant person must not disclose without lawful authority any information supplied to him or another relevant person under section 1.

(2) A person -

(a) who is or who has been employed by a relevant person,

(b) who is or who has been engaged -

(i) in the provision of services to a relevant person in connection with the carrying out of a switchover help function, or

(ii) to carry out any switchover help function, or to carry out any function in connection with the carrying out of a switchover help function, or

(c) who is or who has been employed by, or who is or who has been engaged in the provision of services to, or to carry out a function for, a person mentioned in paragraph (b),

must not disclose without lawful authority information supplied to a relevant person under section 1.

(3) A person who contravenes subsection (1) or (2) commits an offence.

(4) It is not an offence under this section -

(a) to disclose information in the form of a summary or collection of information so framed as not to enable information supplied under section 1 relating to any particular person to be ascertained from it, or

(b) to disclose information which has previously been disclosed to the public with lawful authority.

(5) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he believed -

(a) that he was making the disclosure in question with lawful authority, or

(b) that the information in question had previously been disclosed to the public with lawful authority,

and that he had no reasonable cause to believe otherwise.

(6) For the purposes of this section, a disclosure is to be regarded as made with lawful authority if, but only if, it is made -

- (a) for the purpose of carrying out a switchover help function, or for doing anything connected with the carrying out of a switchover help function,
 - (b) in accordance with any enactment or court order,
 - (c) for the purpose of instituting, or otherwise for the purposes of, proceedings before a court, or
 - (d) with the consent of the person to whom the information relates or of any person authorised to act on that person's behalf.
- (7) A person guilty of an offence under this section is liable -
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both, or
 - (b) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the uniform scale, or both.

Liability of directors etc.

4. (1) If an offence under section 3 committed by a body corporate is shown -

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

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

(3) "**Officer**", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

General provisions as to orders.

5. (1) Orders under this Law -

- (a) may be amended or repealed by subsequent orders hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Home Department to be necessary or expedient, and
- (c) shall be laid before a meeting of the States as soon as possible after being made and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of a new order.

(2) Any power conferred by this Law to make an order may be

exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any conditions specified in the order.

Interpretation

6. (1) In this Law, unless the context requires otherwise -

"the BBC" means the British Broadcasting Corporation,

"care home" means premises managed by or on behalf of the Health and Social Services Department or the Housing Department providing residential accommodation and personal care for persons in need of such

accommodation and care by reason of age, disablement, infirmity or mental disorder,

"department" means -

- (a) any department, council or committee (however called) of the States of Guernsey, and
- (b) any committee of the States of Alderney,

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

"Health and Social Services Department" means the States of Guernsey Health and Social Services Department,

"Home Department" means the States of Guernsey Home Department,

"Housing Department" means the States of Guernsey Housing Department,

"prescribed" means prescribed by order of the Home Department,

"relevant person" has the meaning given by section 1(5),

"Secretary of State" means Her Majesty's Secretary of State for Culture, Media and Sport or Her Majesty's Secretary of State for any government department, or any other Minister of the Crown, to whom his functions are transferred,

"Social Security Department" means the States of Guernsey Social Security 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,

"switchover help functions" has the meaning given by section 1(6),

"switchover help scheme" means any scheme for the provision of help to individuals in connection with digital switchover which is agreed between the BBC and the Secretary of State in pursuance of the BBC Charter and Agreement, as the scheme has effect from time to time, and

"uniform scale" means the uniform scale of fines from time to time in force under the Uniform Scale (Bailiwick of Guernsey) Law, 1989^f.

(2) In this section -

"the BBC Charter and Agreement" means the following documents, or any one or more of them, so far as they are for the time being in force -

- (a) a Royal Charter for the continuance of the BBC,
- (b) supplemental Charters obtained by the BBC under such a Royal Charter,

^f Ordres en Conseil Vol. XXX1, p. 278.

- (c) an agreement between the BBC and the Secretary of State entered into (whether before or after the passing of this Law) for purposes that include the regulation of activities carried on by the BBC,

"**broadcasting**" means broadcasting by wireless telegraphy (as defined by section 116 of the Wireless Telegraphy Act 2006^g, as that Act has effect in the islands of Guernsey, Herm and Jethou) otherwise than by satellite, and

"**digital switchover**" means the replacement of the broadcasting of television services in the islands of Guernsey, Alderney, Herm and Jethou in analogue form with their broadcasting in digital form.

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

Extent.

7. This Law extends to the islands of Guernsey, Alderney, Herm and Jethou.

Citation.

8. This Law may be cited as the Digital Switchover (Disclosure of

^g An Act of Parliament (2006 c.36); the Act was extended to Guernsey with modifications, including to s.116, by the Wireless Telegraphy (Guernsey) Order 2006 (U.K. S.I. 2006/3325).

Information) (Guernsey and Alderney) Law, 2009.

Commencement.

9. This Law shall come into force on the day it is registered on the Records of the Island of Guernsey.

S.M.D. ROSS,
Her Majesty's Deputy Greffier.

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey

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