

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004

(Registered on the Records of the Island of Guernsey
on the 17th January, 2005.)



2005

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ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 17th day of January, 2005 before Sir de Vic Carey, Bailiff;
present:— David Charles Lowe, Laurence Lenfestey Guille, Stephen
Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael
Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald
Lane, Michael John Wilson, Michael Henry De La Mare, Esquires,
and Susan Mowbray, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 13th day of October, 2004, approving and ratifying the Projet de Loi entitled “The Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004”, 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 Clerk of the Court of Alderney and to the Sénéchal of Sark for registration on the records of those Islands respectively.

At the Court at Buckingham Palace

The 13th day of October, 2004

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 the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolution of 25th February, 2004, the States of Deliberation at a meeting on 26th May, 2004, approved a Projet de Loi entitled “The Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004” 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 on 22nd June, 2004, considered the Projet de Loi when a Resolution was passed agreeing to its application to Alderney. That the Chief Pleas of the Island of Sark at a meeting on 8th July, 2004, considered the Projet de Loi when a Resolution was passed agreeing to its application to Sark. 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 Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004” and to order that it shall have force of law in the Bailiwick of Guernsey.

“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 Bailiwick of Guernsey 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.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004

THE STATES, in pursuance of their Resolution of the 25th February, 2004^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 Bailiwick of Guernsey.

Implementation of Human Rights provisions.

1. (1) The States may by Ordinance under this section, for the purpose of the implementation of any provision of -

(a) the Human Rights (Bailiwick of Guernsey) Law, 2000^b; and/or

(b) the Convention;

amend any relevant enactment, subject to the provisions of subsection (3).

(2) In deciding whether or not to enact an Ordinance under this section the States may, without limitation, have regard to -

^a Article V of Billet d'État No. II of 2004.

^b Order in Council No. XIV of 2000.

- (a) any judgment, decision, declaration or opinion mentioned in section 2 of the Human Rights (Bailiwick of Guernsey) Law, 2000;
- (b) any decision of a court in the Bailiwick, the Bailiwick of Jersey, the Isle of Man or the United Kingdom under which a provision of subordinate legislation has been quashed, or declared invalid, by reason of incompatibility with a Convention right;
- (c) any declaration of incompatibility made -
 - (i) under section 4 of the Human Rights (Bailiwick of Guernsey) Law, 2000;
 - (ii) under section 4 of the Human Rights Act 1998;
or
 - (iii) under the equivalent provision in force in the Bailiwick of Jersey or the Isle of Man; and
- (d) any finding of the European Court of Human Rights pursuant to which it appears to the States that a provision of law applicable in the Bailiwick, or any part thereof, is incompatible with an obligation arising from the Convention.

(3) The States shall not enact an Ordinance under this section unless a Law Officer of the Crown has certified that its enactment is in his opinion necessary or expedient for the purpose mentioned in subsection (1).

General provisions as to Ordinances.

2. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient;
- (c) may be made so as to have effect from a date earlier than that on which it is made;
- (d) may be made so as to have the same extent, or any part thereof, as the legislation which it affects and may make any such provision of any such extent as might be made by an Order in Council, other than any provision which -
 - (i) imposes or increases taxation; or
 - (ii) provides that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(2) Any power conferred by this Law to make an Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or

in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of 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 section 2(1)(d)(ii) and the generality of the foregoing, an Ordinance under this Law -

(a) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences; and -

(i) an Ordinance of the States of Deliberation may specify a penalty which may be imposed by the Magistrate's Court which exceeds the limits of jurisdiction for the time being imposed upon

that Court by section 10 of the Magistrate's Court (Guernsey) Law, 1954^c;

(ii) no Ordinance of the States of Alderney or the Chief Pleas of Sark may specify a penalty in respect of an offence triable summarily or on indictment which exceeds -

(A) the maximum penalty specified by Ordinance of the States of Deliberation in respect of that offence when tried summarily or, as the case may be, on indictment, or

(B) the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 1987^d or the Court of the Seneschal by section 23 of the Reform (Sark) Law, 1951^e,

whichever is greater;

(iii) no Ordinance under this Law shall increase the

^c Ordres en Conseil Vol. XVI, p.103; Vol. XXVII, p.170; Vol. XXVIII, p.5; and No. V of 1989.

^d Ordres en Conseil Vol. XXX, p.37; and No. VI of 1989.

^e Ordres en Conseil Vol. XV, p.215; Vol. XXIII, p.200; Vol. XXIX, p.27; No. VII of 1989; and No. XII of 1991.

limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 1987 or the Court of the Seneschal by section 23 of the Reform (Sark) Law, 1951.

Amendment of Law of 2000.

3. In section 6(5) of the Human Rights (Bailiwick of Guernsey) Law 2000^f, insert -

"or (c) make any Ordinance under the Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004.".

Interpretation.

4. (1) In this Law, except where the context excludes-

"the Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November, 1950 as it has effect for the time being in relation to Guernsey;

"implementation", in relation to a provision referred to in section 1(1), includes the enforcement or enactment of the provision, and the securing of the administration, execution, recognition, exercise or enjoyment of the provision, in or under domestic law;

“relevant enactment” means any Law of the States of Deliberation,

^f Order in Council No XIV of 2000.

States of Alderney or Chief Pleas of Sark, including any Law enacted after the date of this Law;

"the States", in section 1, means -

- (a) in relation to a relevant enactment which is applicable only in Alderney, the States of Alderney;
- (b) in relation to a relevant enactment which is applicable only in Sark, the Chief Pleas of Sark;
- (c) in any other case, the States of Deliberation.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^g shall apply to the interpretation of this Law throughout the Bailiwick.

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

(4) Every department of the States of Guernsey must, before recommending the States of Deliberation to agree to make an Ordinance under this Law amending a relevant enactment which applies in Sark or Alderney, consult the General Purposes and Finance Committee of the Chief Pleas of Sark or (as the case may be) the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under this Law.

^g Ordres en Conseil Vol. XIII, p.355.

(5) The requirement imposed by subsection (4) to consult a committee includes a requirement to inform the States of Deliberation of the views of that committee when making any recommendation to the States as to the matter consulted upon.

Citation.

5. This Law may be cited as the Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004.