

ORDER IN COUNCIL

**XIV
2003**

ratifying a Projet de Loi

ENTITLED

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003

(Registered on the Records of the Island of Guernsey
on the 11th August, 2003.)



2003

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 11th day of August, 2003 before Sir de Vic Carey, Bailiff;
present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass,
Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward
Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith
Bichard, OBE, Michael Henry De La Mare, and Michael John
Tanguy, Esquires, Jurats.*

The Bailiff having this day placed before the Court the copy of an Order of Her Majesty in Council dated the 17th day of July, 2003, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003”, THE COURT, after having heard Her Majesty’s Comptroller 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 Seneschal of Sark for registration on the records of those Islands respectively.

At the Court at Buckingham Palace

The 17th day of July, 2003

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 the 30th of October, 2002, the States of Deliberation at a meeting on the 26th March 2003, approved a Projet de Loi entitled “The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003” 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 the 23rd of April 2003 considering 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 held on the 23rd April 2003 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 Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003” 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 of and ratify the said 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 Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003

THE STATES, in pursuance of their Resolution of the 30th October, 2002^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.

Amendment of Law of 2000.

1. (1) The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^b (hereinafter called "**the Law of 2000**") is amended as follows.

(2) After section 9(4)(i) of the Law of 2000, add the following paragraph -

"(j) prohibit, restrict or impose limitations on the carrying on by way of business of regulated activities, or any class or description of regulated activities, in or from within any

^a Article IX of Billet d'État No. XXII of 2002.

^b Order in Council No. I of 2001.

place, or any particular place, outside the
Bailiwick -

- (i) by the licensed fiduciary itself;
- (ii) by any undertaking established by the
licensed fiduciary (including, without
limitation, any branch or subsidiary
thereof); or
- (iii) through or by means of a relationship
with any person (including, without
limitation, a relationship of partnership,
affiliation or association).".

(3) After section 17 of the Law of 2000, add the following
heading and sections -

"Prohibition orders

"Power to make prohibition orders.

17A. (1) If it appears to the Commission, having regard to the provisions of paragraph 3 of Schedule 1, that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a licensed fiduciary, the Commission may make an order (a "**prohibition order**") prohibiting that individual from performing any function, any specified function or any specified description of function.

(2) A prohibition order may relate to -

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- (a) any regulated activity, any specified regulated activity or any specified description of regulated activity;
 - (b) licensed fiduciaries generally or any specified class of licensed fiduciary.
- (3) An individual who performs or agrees to perform any function in breach of a prohibition order is guilty of an offence and liable -
 - (a) 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;
 - (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.
- (4) A licensed fiduciary shall take reasonable care to ensure that none of its functions, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.
- (5) The Commission may, on the application of the individual named in a prohibition order, vary or revoke it.
- (6) In this section "specified" means specified in a prohibition order.

List of prohibition orders.

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17B. (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.

(2) The list referred to in subsection (1) shall specify the functions or description of functions which the individual concerned is prohibited from performing.

(3) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list referred to in subsection (1).

(4) The Commission may publish -

(a) the list referred to in subsection (1); and

(b) the fact that a person has been named in a prohibition order or that a prohibition order has been varied or revoked.

(5) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.

Right to make representations as to prohibition orders.

17C. (1) If the Commission proposes to make a prohibition order against any individual, it shall serve on him a notice in writing -

(a) stating that the Commission is proposing to make a prohibition order against him;

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- (b) stating the terms of, and the grounds for, the proposed prohibition order;
- (c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed prohibition order in such manner as the Commission may from time to time determine; and
- (d) giving particulars of the right of appeal which would be exercisable if the Commission were to make the prohibition order.

(2) The Commission shall consider any representations made in response to a notice served under subsection (1) before giving further consideration to the proposed prohibition order.

(3) The period of 28 days mentioned in subsection (1)(c) may be reduced in any case in which the Commission considers it necessary to do so in the public interest or in the interests of the reputation of the Bailiwick as a finance centre.

(4) Where, having considered any representations made in response to a notice served under subsection (1), the Commission decides to make a prohibition order against any individual, it shall serve on him notice in writing of the decision -

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- (a) stating the terms of, and the grounds for, the prohibition order; and
 - (b) giving particulars of the right of appeal conferred by this Law."
- (4) After section 19(1)(j) of the Law of 2000 insert the following paragraphs -
 - "(k) to make a prohibition order under section 17A prohibiting him from performing any function, any specified function or any specified description of function; or
 - (l) to refuse to vary or revoke any such order under section 17A(5);".
- (5) In section 19(8) of the Law of 2000 -
 - (a) after "or (f)" insert "or (k)"; and
 - (b) after "or direction" insert "or order".
- (6) After section 45(2)(b) of the Law of 2000, add the following paragraph -
 - "or (c) with the consent of the relevant supervisory authority by which the information was supplied, for the purposes or in the circumstances described in any other paragraph

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of section 44." .

Citation.

2. This Law may be cited as the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003.