

ORDER IN COUNCIL

XVII
2002

ratifying a Projet de Loi

ENTITLED

The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002

(Registered on the Records of the Island of Guernsey
on the 5th August, 2002.)



2002

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 5th day of August, 2002 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, Esquires, The Reverend Peter Gerald Lane, Michael Henry
De La Mare, and Michael John Tanguy, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 16th day of July, 2002, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002”, 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 SÉNÉSCHAL of Sark for registration on the records of those Islands respectively.

At the Court at Buckingham Palace

The 16th day of July, 2002

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 5th day of July 2002 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 31st day of October, 2001, the States of Deliberation at a meeting held on the 27th day of March, 2002, approved a Bill or “Projet de Loi” entitled “The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002”, 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 22nd day of May, 2002, 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 Chief Pleas of the Island of Sark at a meeting held on the 20th day of June, 2002, considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Project de Loi” of the States of Guernsey entitled “The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002”, and to order that the same shall have force of law in the Bailiwick of Guernsey”:

“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, and it is hereby ordered, that the same shall have the force of law within the Bailiwick of Guernsey.

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.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002

THE STATES, in pursuance of their Resolution of the 31st October, 2001^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 1987 Law.

1. In the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended^b-

(a) in section 2(2)(b) -

(i) for the words "Finance Committee" substitute "Policy and Finance Committee"; and

(ii) for the words "when such committee" substitute "or the General Purposes and Finance Committee of the Chief Pleas of Sark when either of such committees";

(b) in section 2(2)(c) -

^a Article XX of Billet d'État No. XXI of 2001.

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- (i) for the words "Finance Committee" substitute "Policy and Finance Committee"; and
- (ii) after the words "the States of Alderney" insert "or the General Purposes and Finance Committee of the Chief Pleas of Sark";
- (c) after section 2(2)(c) add the following paragraph -

"(d) the countering of financial crime and of the financing of terrorism; and in this paragraph "financial crime" includes any offence involving -

- (i) fraud or dishonesty;
- (ii) misconduct in, or misuse of information relating to, a financial market; or
- (iii) handling the proceeds of crime;

and "offence" includes an act or omission which would be an offence if it had taken place in the Bailiwick;"

and reletter the existing paragraph (d) of section 2(2) as paragraph (e);

^b Ordres en Conseil Vol. XXX, p. 243; No. XX of 1991; No. XIII of 1994; No. II

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(d) after section 2(2) add the following subsections -

"(2A) For the purposes of subsection (2)(a)
"development" includes, without limitation -

(a) the establishment and ongoing support of
bodies and organisations the functions of which
include or are important or relevant to -

(i) the development of finance business in
the Bailiwick and of that sector of the
Bailiwick economy which carries on
finance business;

(ii) the improvement of the infrastructure of
or serving that sector of the Bailiwick
economy which carries on finance
business;

(iii) the protection of the public; or

(iv) the protection and enhancement of the
reputation of the Bailiwick as a financial
centre;

(b) the approaching, at the request of third parties
or otherwise, of persons engaged or otherwise

connected with that sector of the Bailiwick economy which carries on finance business for statistical information for analysis and, where appropriate, for onward transmission to third parties;

- (c) the provision to the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark, when any of such committees so requests, and subject to the agreement of the Commission, of statistical information relating to that sector of the Bailiwick economy which carries on finance business.

(2B) The Committee may, after consultation with the Commission, make (and subsequently amend and repeal) regulations requiring the provision by persons described in subsection (2A)(b) of statistical information: and any such regulations may create offences and prescribe penalties for contraventions or failures to comply with the regulations.";

- (e) in section 2(3)(b) the words "other than this Law" are repealed;
- (f) in section 2(4) the word "general" is repealed;
- (g) in section 2(4)(a) before the words "the protection of the public" insert "the protection of the public interest,

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including";

- (h) in section 11(1) after the word "functions" insert "; and the most senior officer of the Commission shall have the title Director-General";
- (i) in section 15(2) before the words "under this section" insert "by the Committee";
- (j) for section 15(4) substitute the following subsection -

"(4) The Commission may borrow monies otherwise than as mentioned in the preceding provisions of this section for the purpose of carrying out its functions:

Provided that the Commission may not borrow monies under this subsection at any time to the extent that the aggregate amount outstanding by way of principal in respect of monies so borrowed would exceed one third of the Commission's fee income for the preceding calendar year.";

- (k) in section 16 -
 - (i) after the word "invest" insert "or lend"; and
 - (ii) after the word "investment" insert "or, as the case may be, by way of any loan";
 - (iii) for the words "approved for the purpose by the Committee in writing" substitute -

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" : Provided that the Commission may not lend any of its funds under this subsection at any time to the extent that the aggregate amount lent under this subsection would exceed one third of the Commission's fee income for the preceding calendar year.";

- (l) in section 18 replace the side-heading with the following -

"Accounts, audit, internal controls and corporate governance."

and after section 18(2) insert the following subsections -

"(3) The Commission shall review in each year, by the appointment of appropriately qualified and independent professional persons or otherwise -

- (a) the adequacy and application of the Commission's systems of internal control;
- (b) the selection and application of the Commission's accounting policies and accounting procedures;
- (c) the effective, efficient and economical management of the Commission's assets and resources; and
- (d) the Commission's compliance with such

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generally accepted principles of good corporate governance as it is reasonable to regard as being applicable to the Commission;

and the members of the Commission shall satisfy themselves in connection with the conclusions of any such review.

(4) The Commission shall provide the Committee with an annual report on the matters set out in paragraphs (a) to (d) of subsection (3); and for the removal of doubt the report required to be made pursuant to this subsection is in addition to the report required to be made pursuant to section 6.

(5) The Committee may at any time appoint an appropriately qualified and independent professional person to review, and report to the Committee on, the matters set out in paragraphs (a) to (d) of subsection (3); and the Commission shall grant all reasonable assistance to that person in the conduct of his review and the preparation of his report.";

(m) in section 19(1) the words "under its common seal" are repealed;

(n) for section 19(1)(c)(ii) substitute the following -

"(ii) empowers the Commission to cancel, revoke, suspend or withdraw a licence, consent, registration, permission or authorisation (except where the

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cancellation, revocation, suspension or withdrawal is done with the consent of the person who is, or who is acting on behalf of, the holder of the licence, consent, registration, permission or authorisation);";

- (o) in section 20 for paragraphs (a) and (b) substitute the following words -

"signed by a member or officer of the Commission authorised in that behalf under section 19.";

- (p) in section 21(2) -

- (i) in paragraph (a) the word "statutory" is repealed;
- (ii) for paragraph (b) substitute the following -

"(b) 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";

- (iii) in paragraph (d), after "the public" insert "or otherwise" and for the word "those" substitute "any of the functions";

- (q) for section 21(3) substitute the following -

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"(3) Without prejudice to subsections (1) and (2), any information -

- (a) communicated to the Commission or to any of its members, officers or servants by any committee of the States, of the States of Alderney or of the Chief Pleas of Sark; or
- (b) held by the Commission or by any of its members, officers or servants on behalf of any such committee;

shall be regarded as confidential, if that committee so requests, by the Commission and by its members, officers and servants; and no such information shall be disclosed -

- (i) except in compliance with the directions of any division of the Royal Court; or
 - (ii) except, with the leave of that committee (which may be granted generally or for the purposes of any particular case), for any reason set out in paragraphs (a) to (e) of subsection (2).";
- (r) in section 21(4) -
- (i) after the word "who", wherever appearing, insert "without reasonable excuse";

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(ii) for paragraph (b) substitute the following paragraph -

"(b) 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.";

(s) after section 21(4) insert the following subsection -

"(5) In proceedings against a person for an offence under subsection (4) it shall be 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 information in question was to be regarded as confidential.";

(t) after section 21 insert the following section -

"Co-operation with foreign authorities.

21A. The Commission shall take such steps as it considers appropriate to co-operate with any person or body -

(a) who or which appears to the Commission to exercise in a place outside the Bailiwick functions corresponding to any of the functions of the Commission; or

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- (b) 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;

and co-operation under this section may, without limitation, take the form of sharing any information which the Commission may lawfully disclose.";

- (u) in section 24(1) -

- (i) in the definition of the expression "Chairman" for "paragraph 1(a)" substitute "paragraph 2"; and

- (ii) in the definition of the expression "ordinary member" for "1(b)" substitute "1(3)";

- (v) for paragraphs 1, 2, 3 and 4 of Schedule 1 substitute the following paragraphs -

"Members of the Commission.

1. (1) The Commission shall consist of five members.

- (2) The members of the Commission (who shall be known as Commissioners) shall be persons elected by the States from persons nominated by the Committee and appearing to the Committee to be persons having knowledge, qualifications or experience appropriate to the development and supervision of finance business in the Bailiwick.

(3) The members of the Commission other than the Chairman elected under paragraph 2 are referred to in this Schedule as "ordinary members".

Chairman of the Commission.

2. (1) The States shall elect (annually and on the arising of a casual vacancy) one of the members of the Commission, nominated in that behalf by the Committee, as Chairman.

(2) A Chairman so elected shall, subject to subparagraphs (3) and (5), hold that office -

(a) for one year from the date of his election to that office; or

(b) until he ceases to be a member of the Commission;

whichever is the earlier.

(3) The Chairman may at any time resign his office as such by giving notice in writing, delivered to the Vice-Chairman.

(4) The resignation of a person under subparagraph (3) shall not, in itself, affect his continuance in office as an ordinary member.

(5) An ordinary member elected to fill a casual

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vacancy in the office of Chairman shall, subject to subparagraph (3), hold office -

- (a) for the unexpired portion of the term of office as Chairman of the person in whose place he was elected; or
- (b) until he ceases to be a member of the Commission;

whichever is the earlier.

Tenure of office.

3. (1) Each member of the Commission shall, subject to the provisions of paragraph 4, hold office for three years from the date on which he is elected as a member of the Commission.

(2) A member of the Commission whose term of office comes to an end by effluxion of time is eligible, if otherwise qualified, for re-election as a member.

(3) A member of the Commission shall in any event retire from office on reaching the age of 72 years.

Resignation, removal and casual vacancies.

4. (1) A member of the Commission may at any time resign his office by giving notice in writing delivered to -

- (a) the Chairman (in the case of an ordinary

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member); or

- (b) the Vice-Chairman (in the case of the Chairman).

(2) If it appears to the Chairman that an ordinary member of the Commission -

- (a) has been absent from three consecutive meetings of the Commission without the Commission's consent;
- (b) has been declared insolvent;
- (c) is incapacitated by physical or mental illness;
or
- (d) is otherwise unable or unfit to discharge the functions of a member of the Commission;

the Chairman may declare his office as an ordinary member of the Commission to be vacant, and shall notify that fact as the Chairman thinks fit; and thereupon the office shall become vacant.

(3) If it appears to the States on the recommendation of the Committee that any member of the Commission (including the Chairman) -

- (a) has been absent from three consecutive

meetings of the Commission without the Commission's consent;

- (b) has been declared insolvent;
- (c) is incapacitated by physical or mental illness;
or
- (d) is otherwise unable or unfit to discharge the functions of a member of the Commission;

the States may, on the recommendation of the Committee, declare his office as Chairman or, as the case may be, as a member of the Commission to be vacant; and thereupon the office shall become vacant.";

- (w) in paragraph 5(2) of Schedule 1 the words "not less than one month's" are repealed;
- (x) in paragraph 6(2)(b) of Schedule 1 for the words "level 4"^c substitute "level 5";
- (y) in paragraph 7(b) of Schedule 1 the word "ordinary" is repealed;
- (z) in paragraph 8(a) of Schedule 1 for the words "his alternate" substitute "the Vice-Chairman";

^c The words "level 4" were substituted for "£500" by Ordres en Conseil Vol. XXI, p. 278.

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- (aa) paragraph 8(e) of Schedule 1 is repealed;
- (bb) in paragraph 10(1) of Schedule 1 -
 - (i) the word "general" is repealed; and
 - (ii) after the word "functions" insert " , and any other matter of relevance to the Commission,"; and
- (cc) after paragraph 13 of Schedule 1 insert the following paragraph -

"Amendment by Ordinance of Schedule.

14. (1) The States may by Ordinance amend the provisions of this Schedule.

- (2) An Ordinance under this paragraph -
 - (a) may be amended or repealed by a subsequent Ordinance hereunder;
 - (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States to be necessary or expedient."

Amendment of Laws as regards Commission's fees.

- 2.** (1) In section 7 of the Banking Supervision (Bailiwick of

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Guernsey) Law, 1994^d, for the words "The Committee may, after consultation with the Commission," substitute "The Commission may, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark,".

(2) After section 58(1) of the Insurance Business (Guernsey) Law, 1986^e insert the following subsection -

"(1A) Notwithstanding the provisions of subsection (1), regulations under section 63A shall be made by the Commission after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark.".

(3) After section 22(3) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^f add the following subsection -

"(4) Notwithstanding the provisions of section 21(1), regulations under this section shall be made by the Commission after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark.".

^d Order in Council No. XIII of 1994.

^e Ordres en Conseil Vol. XXIX, p. 214; there are amendments not material to this enactment.

^f Ordres en Conseil Vol. XXX, p. 281; there are amendments not material to this enactment.

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Citation.

3. This Law may be cited as the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002.

Commencement.

4. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions.