

PROJET DE LOI

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

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* No. XXV of 2009; as amended by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013 (No. IV of 2014); the Income Support (Guernsey) Law, 2017 (No. IV of 2018); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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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 [Committee for Employment & Social Security] 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 [Committee for Health & Social Care] and the [Committee for Employment & Social Security] 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 use (by the person to whom it is supplied or by another relevant person) in

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

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.

NOTES

In section 1,

the words "Committee for Employment & Social Security" in square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 13, with effect from 1st May, 2016;

the words "Committee for Health & Social Care" in the first pair of square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016;

the words "Committee for Employment & Social Security" in the second pair of square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 7(a), with effect from 1st May, 2016.

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 [Committee for Employment & Social Security] (or on its behalf) and obtained as a result of, or for the purpose of, the exercise of that [Committee]'s functions including, without limitation, its functions under –

- (a) the [Income Support (Guernsey) Law, 1971]^b,
- (b) the Social Insurance (Guernsey) Law, 1978^c,
- (c) the [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984]^d, and
- (d) the Long-term Care Insurance (Guernsey) Law, 2002^e.

(3) **"Care home residency information"** means information of a

^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.

^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.

prescribed description held by, or on behalf of –

- (a) the [Committee for Health & Social Care] and obtained as a result of, or for the purpose of, the exercise of its functions in relation to care homes, or
- (b) the [Committee for Employment & Social Security] and obtained as a result of, or for the purpose of, the exercise of its functions in relation to care homes.

(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.

NOTES

In section 2,

the words, first, "Committee for Employment & Social Security" in the first and, second "Committee" in the second pair of square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 13 and section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;

the words in square brackets in paragraph (a) of subsection (2) were substituted by the Income Support (Guernsey) Law, 2017, section 1(2), Schedule 1, paragraph 1, with effect from 6th July, 2018;

the words in square brackets in paragraph (c) of subsection (2) were substituted by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013, section 1(2), First Schedule, paragraph 1, with effect from 1st May, 2014;

the words "Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016;

the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 7(a), with effect from 1st May, 2016.

The following Order has been made under section 2:

Digital Switchover (Prescription of Information) (Guernsey and Alderney) Order, 2010.

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 [Committee for Home Affairs] 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.

NOTE

In section 5, the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

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 [Committee for Health & Social Care] or the [Committee for Employment & Social Security] 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,

"[Committee for Health & Social Care]" means the States of Guernsey [Committee for Health & Social Care],

"[Committee for Home Affairs]" means the States of Guernsey [Committee for Home Affairs],

"[Committee for Employment & Social Security]" means the States of Guernsey [Committee for Employment & Social Security],

"prescribed" means prescribed by order of the [Committee for

Home Affairs],

"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,

"[Committee for Employment & Social Security]" means the States of Guernsey [Committee for Employment & Social Security],

"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 –

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

"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,
- (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.

^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).

NOTES

In section 6,

the words "Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016;

the words "Committee for Employment & Social Security" in, first, the second pair of square brackets in the definition of the expression "care home" in subsection (1) and, second, in the first and second pairs of square brackets in the definition of the expression "Committee for Employment & Social Security", where first occurring in subsection (1), were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 7(a), with effect from 1st May, 2016;

the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016;

the words "Committee for Employment & Social Security" in the first and second pairs of square brackets in the definition of the expression "Committee for Employment & Social Security", where second occurring in subsection (1), were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 13, with effect from 1st May, 2016.

The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Housing Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 7(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Social Security Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 13, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

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 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.

NOTE

The Law received Royal Sanction on 17th November, 2009 and was registered on the Records of the Island of Guernsey and came into force on 7th December, 2009.
