

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004

(Registered on the Records of the Island of Guernsey
on the 5th September, 2005.)



2005

**XIII
2005**

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of September, 2005 before Geoffrey Robert Rowland, Esquire, Bailiff; present:— David Charles Lowe, Laurence Lenfestey Guille, Stephen Edward Francis Le Poidevin, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Esquires, Susan Mowbray, Barbara Jean Bartie and David Osmond Le Conte, Esquire, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th day of July, 2005, approving and ratifying the Projet de Loi entitled “The Prevention of Discrimination (Enabling Provisions) (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 7th day of June, 2005

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 September, 2003, the States of Deliberation at a meeting on 29th September, 2004, approved a Projet de Loi entitled “The Prevention of Discrimination (Enabling Provisions) (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 held on 17th November, 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 held on 24th November, 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 gracioulsy pleased to sanction “The Prevention of Discrimination (Enabling Provisions) (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 Island 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 Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004

THE STATES, in pursuance of their Resolution of the 25th September, 2003^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.

Power to make Ordinances as to prevention of discrimination.

1. (1) The States may by Ordinance make such provision as they think fit in relation to the prevention of discrimination.

(2) In this Law "**discrimination**" means discrimination against any person by reason of race, colour, sex, sexual orientation, language, religion, belief, political or other opinion, national or social or ethnic origin, association with a national minority, age, disability, gender reassignment, property, birth, or marital, family or other status.

Implementation of international agreements relating to discrimination.

2. An Ordinance under this Law may, without limitation, make provision for the implementation of any international agreement relating to the prevention of discrimination or any aspect thereof.

^a Article XIV of Billet d'État No. XXI of 2003.

Interpretation.

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

"**Bailiwick**" means the Bailiwick of Guernsey,

"**discrimination**" has the meaning given by section 1,

"**enactment**" includes any Law, Ordinance, Act of Parliament and Order in Council,

"**implementation**", in relation to any international agreement relating to the prevention of discrimination or any aspect thereof, includes the enforcement or enactment thereof, and the securing of the administration, execution, recognition, exercise or enjoyment thereof, in or under domestic law,

"**international agreement**" means -

- (a) any convention, treaty, protocol or other international instrument, or any provision thereof, and
- (b) any Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b,

whether or not binding upon the Bailiwick or any part thereof, and includes any right, power, liability, obligation, prohibition or restriction created or

^b Order in Council No. III of 1994.

arising, or any remedy or procedure provided for, by or under any such international agreement,

"persons" includes groups of persons and institutions,

"prevention of discrimination" includes -

- (a) the prohibition and elimination of discrimination, and
- (b) the promotion of -
 - (i) equality of status, opportunity and treatment, and
 - (ii) the equal enjoyment of rights and freedoms,

"States" means -

- (a) in relation to the Bailiwick apart from Alderney and Sark, the States of Deliberation,
- (b) in relation to Alderney, the States of Alderney, and
- (c) in relation to Sark, the Chief Pleas of Sark.

(2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Law throughout the Bailiwick.

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

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

General provisions as to subordinate legislation.

4. (1) An Ordinance under this Law -

(a) may be amended or repealed by a subsequent Ordinance hereunder, and

(b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States think fit, including (without limitation) provision repealing, amending or disapplying any enactment.

(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 the generality of the foregoing provisions of this Law, an Ordinance under this Law -

- (a) may make provision for its enforcement, including (without limitation) provision as to -
 - (i) modes of civil enforcement,
 - (ii) modes of criminal enforcement,
 - (iii) remedies in respect of breaches of its provisions, and
 - (iv) the establishment of a tribunal to deal with complaints relating to discrimination (and with any other matters specified in the Ordinance or in any other enactment, whether or not relating to the prevention of discrimination) and a panel of persons from whom the members of the tribunal are to be drawn,

and otherwise as to the administration of justice in

relation to the prevention of discrimination,

- (b) may provide for the establishment of an office of a Commissioner (by whatever name called, and whether as an office of a department or committee of the States or as a separate legal entity) with responsibility relating to the prevention of discrimination and the administration of any Ordinance under this Law, and with such rights, liabilities, powers, functions and capacity as may be specified by Ordinance,
- (c) may provide for the vesting of any right, liability, power and property in the Commissioner or his office,
- (d) may amend the meaning of "discrimination" given by section 1,
- (e) may make provision for the jurisdiction and powers of the courts of the Bailiwick, and the constitution and procedure of those courts, in relation to the prevention of discrimination,
- (f) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences and may (for the avoidance of doubt) specify penalties which may be imposed by the Magistrate's Court, the Court of Alderney or the Court of the Seneschal which exceed the limits of jurisdiction for the time being imposed upon those Courts by, respectively, section 10 of the Magistrate's Court

(Guernsey) Law 1954^d, section 13 of the Government of Alderney Law, 1987^e and section 23 of the Reform (Sark) Law, 1951^f,

(g) may provide for exceptions and derogations from the enforcement and applicability of provisions for the prevention of discrimination, on social, community, economic and other grounds,

(h) may direct that any provision of -

(i) any international agreement relating to the prevention of discrimination or any aspect thereof, or

(ii) any enactment or any order, rule, regulation, scheme, warrant, byelaw or other instrument made under any enactment,

shall have effect in the part of the Bailiwick to which the Ordinance applies with such exceptions, adaptations and modifications as may be specified in the Ordinance,

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

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

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

- (i) without prejudice to the provisions of paragraph (h), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision described in paragraph (h), which provision shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance under this Law,
- (j) may make provision for the purpose of dealing with matters arising out of or related to -
 - (i) the prevention of discrimination, or
 - (ii) any provision described in paragraph (h),
- (k) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (l) may empower any department or committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, and any other body (including, without limitation, the Royal Court and any other court of the Bailiwick), to make orders, rules or regulations, and
- (m) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi (including provision amending any enactment), but may not provide that a

person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

Citation.

5. This Law may be cited as the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.