

ORDER IN COUNCIL

**XXII
2003**

ratifying a Projet de Loi

ENTITLED

The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003

(Registered on the Records of the Island of Guernsey
on the 14th August, 2003.)



2003

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 14th 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, Keith Bichard, OBE, Michael John Wilson,
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 Financial Services Commission (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 Financial Services Commission (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 Financial Services Commission (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 Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003

THE STATES, in pursuance of their Resolution of the 30th day of 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 1987.

1. (1) The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended^b (hereinafter called "**the Law of 1987**"), is further amended as follows.

(2) After section 11(1) of the Law of 1987, insert the following subsections -

"(1A) The Director-General shall, subject to provisions of subsection (1B) and to the terms and conditions of his appointment as to resignation, hold office for a minimum term which shall be determined by the Commission.

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

^b Ordres en Conseil Vol. XXX, p. 243; No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998; No's XVII and XXI of 2002; also amended (from a date to be appointed) by the Public Trustee (Bailiwick of Guernsey) Law, 2002.

(1B) The Director-General may be dismissed from office by the Commission, but only on the following grounds -

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

and if he is dismissed from office then public notice shall be given of the reasons for the dismissal.

(1C) The power conferred by subsection (1A) to determine a minimum term of office may not be delegated to any of the Commission's members or officers under section 19(1)."

(3) After section 11(3) of the Law of 1987, insert the following subsection -

"(4) Without prejudice to the provisions of sections 22 and 23 (and of any Ordinance thereunder), the Commission shall take such steps

as it considers necessary and reasonable to protect and indemnify its current and former members, officers and servants against any costs, claims, liabilities and proceedings arising from or in consequence of anything done or omitted to be done in the discharge or purported discharge by them of their functions as members, officers or, as the case may be, servants of the Commission."

(4) After section 11 of the Law of 1987, insert the following sections -

"Publication of regulations, etc.

11A. The Commission shall publish, in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and subject to such charges (if any) as it may decide to levy to cover the costs of publication -

- (a) any regulations, rules, codes of conduct and guidance notes made by the Commission in pursuance of its functions; and
- (b) any policies issued or applied by the Commission in respect of the granting, amendment, suspension and revocation by it, in pursuance of its statutory functions, of any licences, consents, registrations, permissions and authorisations.

Disqualification orders against auditors.

11B. (1) If it appears to the Commission that a person who is or has been an auditor of a licensee -

- (a) has failed to comply with any duty imposed on him by or under the regulatory Laws; or
- (b) is for any other reason unfit to be an auditor of a licensee (whether by reason of lacking the necessary skills or resources to carry out effectively his responsibilities as auditor or otherwise);

or if for any other reason it is in the interests of the public or any class thereof to do so, the Commission may, subject to the following provisions of this section, make an order (a "**disqualification order**") disqualifying him from being the auditor of any licensee or any particular class of licensee.

(2) The Commission may, on the application of the person named in a disqualification order or of its own motion, vary or revoke a disqualification order.

(3) If the Commission proposes to make or vary a disqualification order against any person, it shall serve on him a notice in writing -

- (a) stating that the Commission is proposing to make or vary a disqualification order against him;
- (b) stating the terms of, and the grounds for, the proposed disqualification order or the variation thereof;

- (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 disqualification order or variation thereof 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 under this section if the Commission were to make or vary the disqualification order.

(4) The Commission shall consider any representations made in response to a notice served under subsection (3) before giving further consideration to the proposed disqualification order or variation thereof.

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

(6) Where the Commission decides to make or vary a disqualification order against any person it shall serve on him notice in writing of the decision -

- (a) stating the terms of, and the grounds for, the disqualification order or the variation thereof;

and

- (b) giving particulars of the right of appeal conferred by this section.

(7) A person aggrieved by a decision of the Commission -

- (a) to make or vary a disqualification order against him; or
- (b) to refuse to vary or revoke a disqualification order made against him;

may appeal to the Court against the decision.

(8) The grounds of an appeal under this section shall be that the decision was ultra vires or was an unreasonable exercise of the Commission's powers.

(9) An appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the notice of the Commission's decision; and
- (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(10) The Commission may, where an appeal under this

section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct); or
- (b) make such other order as the Court considers just;

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 36(2) of the Royal Court Civil Rules, 1989.

(11) On an appeal under this section the Court may -

- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit; or
- (b) confirm the decision, in whole or in part.

(12) On an appeal under this section against a decision to make a disqualification order the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the disqualification order or the variation thereof pending the determination of the appeal.

(13) An appeal from a decision of the Court made under this section shall lie to the Court of Appeal on a question of law.

(14) In this section -

"Court" means the Royal Court sitting as an Ordinary Court;

"disqualification order" has the meaning given by subsection (1);

"licensee" means a person who holds or is deemed to hold a licence, consent, registration, permission or authorisation from the Commission under the regulatory Laws."

(5) In section 13(b) of the Law of 1987 for the words "made by the Committee under this paragraph" substitute "made under this paragraph 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".

(6) In section 21(2) of the Law of 1987, after paragraph (f)^c, insert the following paragraph -

"or (g) to enable any body established to control or supervise gambling or gaming in the Bailiwick or any part thereof to carry out its functions or to investigate matters of relevance to its

^c Paragraph (f) of section 21(2), formerly paragraph (e), was relettered by the Public Trustee (Bailiwick of Guernsey) Law, 2002.

functions."

(7) After section 21(5)^d of the Law of 1987, insert the following subsections -

"(6) The Commission shall, when disclosing any information to any person (whether pursuant to the provisions of this section or otherwise) -

- (a) impose such conditions in relation to the use, disclosure, safekeeping and return of that information by that person or by any other person who may obtain the information from him;
- (b) require any such person to enter into such undertakings in relation to such use, disclosure, safekeeping and return; and
- (c) take such other steps to ensure that the confidentiality of the information is protected;

as the Commission thinks fit.

(7) Notwithstanding the provisions of subsection (2), no such information as is referred to in subsection (1) which is supplied to the

^d Subsection (5) of section 21 was inserted by Order in Council No. XVII of 2002.

Commission for the purposes of its functions by an authority described in subsection (2)(d) shall be disclosed, except -

- (a) with the consent of the persons whose consent is referred to in subsection (2);
- (b) to the extent that its disclosure is expressly authorised or required by or under any enactment relating to the Commission's statutory functions;
- (c) for the purposes or in the circumstances described in subsection (2)(a) or (b); or
- (d) with the consent of the authority by which the information was supplied, for the purposes or in the circumstances described in any other paragraph of subsection (2).".

(8) After section 21A^e of the Law of 1987, insert the following sections -

"Investigations in support of foreign authorities.

21B. (1) Any relevant power conferred on the Commission by an enactment may, at the request of an authority of a description set out in section 21(2)(d) (the "**requesting authority**"), be exercised for the purpose of enabling or assisting, in the interests of the public or otherwise, the

^e Section 21A was inserted by Order in Council No. XVII of 2002.

requesting authority to carry out any of its functions; and the provisions of the enactment shall have effect accordingly.

(2) In deciding whether or not to exercise any power by virtue of subsection (1), the Commission shall take into account in particular-

- (a) whether, in the country or territory of the requesting authority, corresponding assistance would be given to the Commission;
- (b) whether the case concerns the breach of a law or other requirement which has no close parallel in the Bailiwick or involves the assertion of a jurisdiction not recognised by the Bailiwick;
- (c) the seriousness of the case and its importance to persons in the Bailiwick;
- (d) whether the disclosure of information to or co-operation with the requesting authority would, in the Commission's view, lead to disproportionate injury, loss or damage to the persons subject to the exercise of the powers in question; and
- (e) whether it is otherwise appropriate in the public interest to give the assistance sought.

(3) The Commission may decide that it will not exercise any power by virtue of subsection (1) unless the requesting authority undertakes to make such contribution towards the cost of its exercise as the Commission considers appropriate.

(4) Where the Commission decides to exercise any power by virtue of subsection (1), it may permit, or it may direct any inspector or other competent person appointed by it to permit, a representative of the requesting authority to attend, and take part in, any interview conducted in the course of the exercise of the power.

(5) A direction shall not be given under subsection (4) unless the Commission is satisfied that any information obtained by the requesting authority as a result of the interview will be subject to obligations of confidentiality equivalent to those contained in section 21(1) and (2).

(6) The Commission shall prepare a statement of its policy in respect of the conduct of interviews in relation to which a direction has been given under subsection (4).

(7) A statement of policy under subsection (6) shall be published in such manner as the Commission considers best calculated to bring it to the attention of persons likely to be affected by it and the public in general, subject to such charges (if any) as the Commission may decide to levy to cover the costs of publication.

(8) No direction may be given under subsection (4) before the statement of policy has been published.

(9) In this section -

"**relevant power**" means any power to make site visits, to require the provision and verification of information and reports and other documents, to take copies of or extracts from documents or require an explanation of them or a statement of their whereabouts, to appoint inspectors or other competent persons, to put questions and require explanations, to make investigations and reports and to require the attendance or assistance of any person;

"**requesting authority**" has the meaning given by subsection (1).

Site visits.

21C. (1) The States may by Ordinance make such provision as they think fit in relation to the making by the Commission of site visits in respect of licensees and any other class or description of person prescribed by the Ordinance.

(2) An Ordinance under this section may, without limitation, make provision as to -

- (a) the powers that may be exercised in the course of or in consequence of, or otherwise for the purposes of, site visits;
- (b) the persons who may exercise those powers;
- (c) the purposes for which, and the grounds upon which, site visits may be made or any of those powers may be exercised;

- (d) the premises at which site visits may be made;
and
- (e) the penalties, sanctions and other consequences
(criminal or otherwise) in respect of -
 - (i) any failure to co-operate with the
Commission or any other person
exercising or attempting to exercise
functions under the Ordinance,
 - (ii) any other contravention of or failure to
comply with the provisions of the
Ordinance.

(3) In this section "**licensee**" means, subject to the provisions of any Ordinance hereunder, a person who holds or is deemed to hold, or who has applied for, a licence, consent, registration, permission or authorisation from the Commission under any of the regulatory Laws.

(4) The provisions of this section and of any Ordinance hereunder are in addition and not in derogation from the Commission's statutory functions arising otherwise than by virtue of such provisions.

Information from third parties.

21D. (1) The Commission and any member, officer and servant of the Commission may, in exercising their respective functions -

- (a) seek and receive information from any person;

and

- (b) take any such information into account in deciding whether and in what manner to exercise their respective functions.

(2) The provisions of subsection (1) are for the avoidance of doubt and are without prejudice to any function conferred by or under any other enactment.

Duties of confidentiality not broken by disclosure to regulators.

21E. (1) Subject to the provisions of subsection (2), no obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise is contravened by the making of a disclosure of information to the Commission or to any such authority as is described in section 21(2)(d) for the purpose of enabling or assisting the Commission or, as the case may be, that authority to carry out any of its functions.

(2) Subsection (1) does not apply in relation to the disclosure by the Commission and by its members, officers and servants of any information referred to in section 21."

(9) In section 24(1) of the Law of 1987, after the definition of "the public" insert the following definition -

"regulatory Laws" means -

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987;

- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994;
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000;
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002;
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;
- (f) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Commission;".

(10) For section 25 of the Law of 1987, substitute the following section -

"General provisions as to subordinate legislation.

25. (1) Any Ordinance, regulation or order under this Law -

- (a) may be amended or repealed by a subsequent Ordinance, regulation or order, as the case may be, hereunder;
- (b) may contain such consequential, incidental,

supplementary and transitional provision as may appear to be necessary or expedient, including (without limitation), in the case of an Ordinance -

- (i) provision as to the creation and punishment of offences;
- (ii) provision empowering the Commission or the Committee to prescribe by regulation or order anything which may be prescribed under this Law by Ordinance.

(2) Any power conferred by this Law to make any Ordinance, regulation or 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 prescribed conditions.

(3) Any regulation or order made under this Law shall be laid before a meeting of the States as soon as possible after being made; and if at that meeting or the next meeting the States resolve that the regulation or order be annulled, it shall cease to have effect but without prejudice to anything done under it or to the making of a new regulation or order."

(11) In Schedule 1 to the Law of 1987, after paragraph 4(3)^f insert the following subparagraph -

"(4) If the Chairman is dismissed from office pursuant to subparagraph (3), public notice shall be given of the reasons for the dismissal."

Citation.

2. This Law may be cited as the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003.

^f Paragraph 4 of Schedule 1 was substituted by Order in Council No. XVII of 2002.