

ORDER IN COUNCIL

XVI
2008

ratifying a Projet de Loi

ENTITLED

The Banking Supervision (Bailiwick of Guernsey) Amendment Law, 2008

(Registered on the Records of the Island of Guernsey
on the 30th July, 2008.)



2008

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

30th day of July, 2008 before John Russell Finch, Esquire, Lieutenant Bailiff;
present:- David Charles Lowe, OBE, Derek Martin Le Page, Stephen Edward
Francis Le Poidevin, Alan Cecil Bisson, The Reverend Peter Gerald Lane, Michael
Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, Barbara
Jean Bartie, David Osmond Le Conte, and John Ferguson, Esquires, Jurats.

The Lieutenant Bailiff having this day placed before the
Court an Order of Her Majesty in Council dated 9th July 2008 approving and ratifying a
Projet de Loi entitled "The Banking Supervision (Bailiwick of Guernsey) (Amendment)
Law, 2008", THE COURT, after the reading of the said Order in Council and 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 Greffier 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 9th DAY OF JULY 2008

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 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 25th July 2007, the States of Deliberation at a meeting on 30th January 2008 approved a *Projet de Loi* entitled *The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008* 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 9th January 2008 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 21st February 2008 considered the *Projet de Loi* when a Resolution was passed agreeing to the 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 Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008*, 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 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.

Judith Simpson

PROJET DE LOI

ENTITLED

The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008

THE STATES, in pursuance of their Resolution of the 25th July, 2007^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 1994.

1. The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended^b (hereinafter called "**the 1994 Law**"), is further amended as follows.

2. In the arrangement of sections to the 1994 Law for the entry relating to section 26 substitute the following entries -

"26. Power of Bailiff to grant warrant.

26A. Powers conferred by Bailiff's warrant granted under section 26."

3. In section 18 of the 1994 Law -

^a Articles IV and V of Billet d'État No. XIX of 2007.

^b Order in Council No. XIII of 1994; amended by No. XVII of 2002 and by Guernsey S.I. No. 3 of 2000.

(a) after subsection (1)(d) insert -

"(dd) to serve a notice of objection upon him under section 14 or 15;

(ee) to give him a direction under section 17(2);",

(b) at the end of subsection (1)(e) delete "or",

(c) after subsection (1)(f) insert -

"(g) to maintain a direction under section 19(10);

(h) to serve a notice under section 25;

(i) to appoint an inspector under section 27(1); or

(j) to issue a notice under section 28(1);",

(d) subsection (3) is repealed,

(e) for subsection (4) substitute -

"(4) The grounds of an appeal under this section are that -

(a) the decision was ultra vires or there was some other error of law,

(b) the decision was unreasonable,

- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure ",
- (f) for subsection (7) substitute -
- "(7) 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.", and
 - (g) in subsection (8) -
 - (i) the letters, brackets and punctuation mark "(c), (d) or (e)" are repealed, and
 - (ii) after "direction" insert ", notice, appointment".

4. For section 25(13) of the 1994 Law substitute -

"(13) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (12) or sections 30 or 47, or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it."

5. For section 26 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 substitute -

"Power of Bailiff to grant warrant.

26. (1) If the Bailiff is satisfied by information on oath -

- (a) that a notice has been served under section 25 on any licensed institution and that there are reasonable grounds for suspecting -
 - (i) that there has been a failure to comply with any requirement imposed by or under the notice;
 - (ii) that there has been a failure by that institution to comply with any other requirement imposed by or under section 25; or
 - (iii) the accuracy or completeness of any information or documents furnished pursuant to any requirement mentioned

in subparagraph (i) or (ii);

- (b) that it is not practicable to serve a notice under section 25; or
- (c) that there are reasonable grounds for suspecting that if such a notice were served -
 - (i) it would not be complied with;
 - (ii) any documents to which it would relate would be removed, tampered with or destroyed; or
 - (iii) the service of the notice might seriously prejudice the performance by the Commission of its functions;

he may grant a warrant conferring the powers set out in section 26A.

(2) If the Bailiff is satisfied by information on oath that the Commission has appointed inspectors under section 27 to carry out an investigation under that section, and that there are reasonable grounds for suspecting -

- (a) that an offence under this Law has been committed in relation to the investigation;
- (b) the accuracy or completeness of any information or documents furnished in the

course of the investigation; or

- (c) that, if a warrant were not granted -
 - (i) any documents which the inspectors wish or might wish to inspect would be removed, tampered with or destroyed; or
 - (ii) the investigation might be seriously prejudiced;

he may grant a warrant conferring the powers set out in section 26A.

Powers conferred by Bailiff's warrant granted under section 26.

26A. (1) A warrant granted under section 26(1) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

- (a) to enter any premises specified in the warrant, being premises -
 - (i) which are occupied by the institution upon whom the notice under section 25 was or could be served;
 - (ii) upon which the documents to which the notice under section 25 relates are reasonably believed to be; or

- (iii) where no notice under section 25 has been served, upon which the documents to which the notice would relate are reasonably believed to be;

using such force as is reasonably necessary for the purpose;

- (b) to search the premises and, in relation to any documents-

- (i) which were required by the notice under section 25; or

- (ii) where no notice under section 25 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 25;

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them;

- (c) to take copies of or extracts from any such documents;

- (d) to require any person named in, or of a class or

description specified in, the warrant -

- (i) to answer any questions which could have been put to the person under section 25;
- (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b);
- (iii) to make an explanation of any such documents.

(2) A warrant granted under section 26(2) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

- (a) to enter any premises specified in the warrant, being premises -
 - (i) which are occupied by the person being investigated by inspectors under section 27; or
 - (ii) upon which any documents to which the investigation under section 27 relates are reasonably believed to be;

using such force as is reasonably necessary for

the purpose;

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under section 27, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in, or of a class or description specified in, the warrant -
 - (i) to answer any questions relevant to the investigation under section 27;
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b);
 - (iii) to make an explanation of any such documents.

(3) A warrant granted under section 26 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents of which possession is taken under the powers conferred by a warrant granted under section 26 may be retained -

- (a) for a period of three months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(5) A person who without reasonable excuse obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 26 is guilty of an offence.

(6) A statement made by a person in response to a requirement imposed under a warrant granted under section 26 may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (5) or sections 30 or 47; or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it. "

6. In section 27 of the 1994 Law -

(a) subsection (6) is repealed, and

(b) for subsection (9) substitute -

"(9) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him except -

(a) in proceedings for an offence under subsection (8) or sections 30 or 47, or

(b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.".

7. In section 28 of the 1994 Law -

(a) subsection (2)(c) is repealed, and

(b) for subsection (4) substitute -

"(4) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him except -

(a) in proceedings for an offence under subsection (3) or sections 30 or 47, or

(b) in proceedings for some other offence where in giving evidence he makes a statement

inconsistent with it." .

8. In section 29 of the 1994 Law -

(a) in subsection (4)(a) after the word "months" insert "or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct", and

(b) for subsection (6) substitute -

"(6) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him except -

(a) in proceedings for an offence under subsection (5) or sections 30 or 47, or

(b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it." .

9. In section 40 of the 1994 Law -

(a) for subsection (2) substitute -

"(2) The grounds of an appeal under this section are that -

(a) the decision was ultra vires or there was some other error of law,

- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure ", and

(b) for subsection (5) substitute -

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

- (a) set aside the decision of the Commission to issue the notice 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."

10. In section 48(1) of the 1994 Law for "26(2)" substitute "26A(5)".

11. In section 56(1) of the 1994 Law in the definition of "**the Court**" after the words "Ordinary Court" insert "and for the purposes of this Law -

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of the

proceedings or any matter relevant thereto."

Interpretation.

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

Repeal.

13. Section 1(15) of the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003^d is repealed.

Citation.

14. This Law may be cited as the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008.

Commencement.

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

S.M.D. Ross

Her Majesty's Deputy Greffier

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

^d Order in Council No. XVI of 2003.

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey

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