

ORDER IN COUNCIL

VI
2013

ratifying a Projet de Loi

ENTITLED

The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012

(Registered on the Records of the Island of Guernsey
on the 22nd April, 2013.)



2013

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

22nd day of April, 2013 before Richard John Collas, Esquire, Bailiff; present:- Stephen Edward Francis Le Poidevin, Esquire, Susan Mowbray, David Osmond Le Conte, John Ferguson, Stephen Murray Jones, Peter Sean Trueman Girard, David Percy Langley Hodgetts LVO, Terry John Ferbrache, David Allan Grut, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 9th April, 2013, approving and ratifying a Projet de Loi entitled “The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012”, 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 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 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 Windsor Castle

THE 9th DAY OF APRIL 2013

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 28th November 2012, the States of Deliberation at a meeting on 28th November 2012 approved a *Projet de Loi* entitled the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 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 2013 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 16th January 2013 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 Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012, 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.

Christopher Berry

PROJET DE LOI

ENTITLED

The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012

THE STATES, in pursuance of their Resolution of the 28th day of November, 2012^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.

General power to make Ordinances regulating employment agencies.

1. The States may by Ordinance make such provision as they think fit -
 - (a) to secure the proper conduct of employment agencies and employment businesses, and
 - (b) to protect the interests of persons availing themselves of the services of such agencies and businesses.

Specific matters for which Ordinances may make provision.

2. (1) An Ordinance under section 1 may, without limitation, make provision in relation to the following matters -
 - (a) requiring persons carrying on such agencies and businesses to keep records,

^a Article I of Billet d'État No. XXIII of 2012.

- (b) prescribing the form of such records and the entries to be made in them,
- (c) prescribing qualifications appropriate for persons carrying on such agencies and businesses,
- (d) regulating advertising by persons carrying on such agencies and businesses,
- (e) safeguarding clients' money deposited with or otherwise received by persons carrying on such agencies and businesses,
- (f) restricting the services which may be provided by persons carrying on such agencies and businesses,
- (g) regulating the way in which and the terms on which services may be provided by persons carrying on such agencies and businesses, and
- (h) restricting or regulating the charging of fees by persons carrying on such agencies and businesses.

(2) An Ordinance under section 1 may implement the provisions, or any provision, of any relevant convention, treaty or agreement.

General provisions as to Ordinances.

3. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).
- (2) Any power to make an Ordinance under this Law 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, subject to subsection (4), 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 courts,
- (b) may empower the Department, any other department, and any other body, to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance made under it,
- (c) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith,
- (d) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (e) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1,

- (f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
- (g) 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, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) The power conferred by subsection (3)(a) to create offences and specify penalties does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008^b, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding five years.

(5) The power to make an Ordinance under this Law shall -

^b Order in Council No. XVIII of 2009.

- (a) where it is exercised in respect of Alderney, be exercised following consultation with the Policy and Finance Committee of the States of Alderney, and
- (b) where it is exercised in respect of Sark, be exercised following consultation with the Finance and Commerce Committee of the Chief Pleas of Sark,

but a failure to comply with this subsection shall not invalidate any Ordinance made under this Law.

Interpretation.

4. (1) In this Law, unless the context otherwise requires –

a "**department**" means any department, council or committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, however styled,

"**the Department**" means the States of Guernsey Commerce and Employment Department,

"**employment agency**" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them,

"**employment business**" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with

any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity,

"enactment" means any Law, Ordinance or subordinate legislation,

"implement" includes the enforcement or enactment, and the securing of the administration, execution, recognition, exercise or enjoyment, in or under domestic law -

- (a) of the provision or provisions of the convention, treaty or agreement in question, and
- (b) of any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the same,

"relevant convention, treaty or agreement" means any convention, treaty or agreement having as its object the proper regulation of employment agencies and employment businesses or the protection of the interests of persons availing themselves of the services of such agencies and businesses; and, for the avoidance of doubt, includes any convention, treaty or agreement adopted by the General Conference of the International Labour Organisation and whether or not directly applicable in or binding upon the Bailiwick, and

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) 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.

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

Citation.

5. This Law may be cited as the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012.

Commencement.

6. (1) This Law shall come into force -

- (a) in respect of Guernsey and Alderney, on the day appointed by Ordinance of the States, and
- (b) in respect of Sark, on the day appointed by Ordinance of the Chief Pleas.

(2) An Ordinance under subsection (1) may appoint different dates for different provisions and for different purposes.

J. TORODE,
Her Majesty's Greffier.

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

**Copies may be purchased from
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