

PROJET DE LOI

ENTITLED

The Control of Trade in Endangered Species (Enabling Provisions) (Bailiwick of Guernsey) Law, 2010 ^{*}

[CONSOLIDATED TEXT]

NOTE

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^{*} No. III of 2011; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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ARRANGEMENT OF SECTIONS

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THE STATES, in pursuance of their Resolution of the 27th day of April, 2006^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 trade, etc, in wild fauna and flora.

1. The States may by Ordinance make such provision as they think fit –
 - (a) to protect species of wild fauna and flora by regulating trade, taking, possession and transport thereof, and
 - (b) to implement the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora^b ("**the Convention**").

NOTE

The following Ordinance has been made under section 1:

Control of Trade in Endangered Species etc. (Bailiwick of Guernsey) Ordinance, 2016.

Specific matters for which Ordinances may make provision.

^a Article X of Billet d'État No. VIII of 2006.

^b Signed at Washington DC on the 3rd March 1973; the United Kingdom ratified the Convention on the 2nd August 1976, and it came into force on the 31st October 1976.

2. An Ordinance under section 1 may, without limitation, make provision in relation to the following matters –

(a) the regulation of imports, exports and re-exports of specimens of such species of fauna and flora as may be specified, by way of permits and certificates issued by [the Committee], including, without limitation, provision as to –

(i) the classification of species by reference to Council Regulation (EC) No. 338/97 of the 9th December 1996 on the protection of species of wild fauna and flora by regulating trade therein and its Annexes, and such other Regulations as may be specified,

(ii) the criteria of which [the Committee] is to be satisfied, and the requirements which the importer or exporter or re-exporter is to fulfil (including the provision of evidence of such matters as may be specified and, in the case of imports, the prior presentation of export and re-export permits and certificates issued by the exporting state) before such a permit or certificate may be issued.

The criteria and requirements mentioned above may differ by reference to such factors as may be specified, including the species or class of species of the specimen, whether the specimen is live, whether it was born and bred in captivity, whether it has been introduced from the sea and in the case of a dead specimen or parts thereof, whether it is antique, and whether it comprises or forms part of personal or household effects,

- (iii) the specification of ports of entry as being the only such ports into and from which the import and export and re-export of specimens of classified species is to be permitted,
- (iv) the presentation of documentation and specimens for examination at ports of entry or elsewhere prior to the import or export or re-export concerned,
- (v) the identification and marking of specimens of classified species,
- (vi) the import of specimens of classified species from, or the export or re-export to, a state that is not a party to the Convention,
- (vii) the regulation of the movement within the Bailiwick of Guernsey of specimens of classified species by way of certificates issued by [the Committee] or any other specified department,
- (viii) the form of the documentation relating to such imports, exports, re-exports and movements, including the issue, amendment, suspension and cancellation of permits and certificates, and the issue of permits and certificates subject to conditions,
- (ix) appeals against refusals to issue a permit or certificate, and against decisions to issue a permit or certificate subject to conditions or to cancel a permit or certificate, and the establishment of a tribunal to hear and

determine such appeals,

- (b) the designation of [the Committee] as the Management Authority, and the designation of one or more Scientific Authorities, for the purposes of Article IX of the Convention,
- (c) the control of commercial activities relating to specified species, including the prohibition of the purchase, sale or use for commercial gain of specimens of classified species,
- (d) the prohibition of the ownership or possession of specimens of classified species,
- (e) the exchange of specimens of classified species between scientific institutions, including the registration of scientific institutions for this purpose,
- (f) the prohibition of the organisation or other facilitation of trade in or movement of specimens of classified species outside the Bailiwick of Guernsey,
- (g) the levying of fees or charges,
- (h) the actions and measures that may be taken by any specified person, or court, to ensure compliance with the above regulations, controls and prohibitions,
- (i) the disposal of specimens of classified species condemned or deemed to have been condemned as forfeited,
- (j) the penalties, remedies and sanctions (civil or criminal) which may be imposed for breach of any Ordinance, and

- (k) the courts and persons which, or who, may impose or grant any such penalties, remedies or sanctions.

NOTES

In section 2, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

The following Ordinance has been made under section 2:

Control of Trade in Endangered Species etc. (Bailiwick of Guernsey) Ordinance, 2016.

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 Committee], any other department, and any other body, to make or issue orders, rules, regulations, codes or guidance, whether as to matters in respect of which an Ordinance can be made under this Law or otherwise,
- (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^c, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding five years.

(5) [The Committee] (and any other department of the States) shall, before recommending the States to agree to make an Ordinance under this Law, consult the Agriculture Committee of the Chief Pleas of Sark and the Policy

^c Order in Council No. XVIII of 2009.

and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection shall not invalidate any Ordinance made under this Law.

(6) An Ordinance made under this Law does not have effect in Alderney or Sark unless approved by the States of Alderney or (as the case may be) the Chief Pleas of Sark.

(7) For the purposes of subsection (6) –

- (a) an Ordinance shall be deemed to have been approved by the States of Alderney on the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless within that period the States of Alderney resolve to disapprove its application to Alderney, and
- (b) an Ordinance shall be deemed to have been approved by the Chief Pleas of Sark at the close of the second meeting of Chief Pleas following the day of its approval by the States of Deliberation, unless Chief Pleas resolve to disapprove its application to Sark either at that meeting, or at the meeting immediately preceding that meeting.

NOTE

In section 3, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Interpretation.

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

"the Convention" has the meaning assigned to it in section 1(b),

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

"[the Committee]" means the States [Committee for the Environment & Infrastructure],

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

"implementation", in relation to the Convention, includes the enforcement or enactment, and the securing of the administration, execution, recognition, exercise or enjoyment, in or under domestic law –

- (a) of the Convention, 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 Convention,

"species" means any species, sub-species, or geographically separate population thereof,

"specimen" means –

- (a) any animal or plant, whether alive or dead;
- (b) in the case of an animal: for species included in Appendices I and II of the Convention, any readily recognizable part or derivative thereof; and for species included in Appendix III of the Convention, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and
- (c) in the case of a plant: for species included in Appendix I of the Convention, any readily recognizable part or derivative thereof; and for species

included in Appendices II and III of the Convention, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species, 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, the Convention or a Regulation is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) References in this Law to the Policy and Finance Committee of the States of Alderney and the Agriculture Committee of the Chief Pleas of Sark are references to the committees of those islands for the time being performing the functions respectively conferred by this Law on those said Committees.

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

NOTES

In section 4, the words, first, "the Committee" and, second, "Committee for the Environment & Infrastructure" in square brackets in the definition of the expression "the Committee" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 5 and section 2, Schedule 1, paragraph 1(c), Schedule 2, Part 1, paragraph 2, with effect from 1st May, 2016.

The functions, rights and liabilities of the Commerce and Employment 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 the Environment & Infrastructure and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(c), Schedule 2, Part 1, paragraph 2, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

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

Citation.

5. This Law may be cited as the Control of Trade in Endangered Species (Enabling Provisions) (Bailiwick of Guernsey) Law, 2010.

Commencement.

6. This Law shall come into force on the day of its registration on the Records of the Island of Guernsey.

NOTE

The Law was registered on the Records of the Island of Guernsey on 28th February, 2011.
