

PROJET DE LOI

ENTITLED

The Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

* No. XIV of 2008. See also the Government of Alderney Law, 2004 (No. III of 2005, Ordres en Conseil Vol. XLV, p. 26); the Magistrate's Court (Guernsey) Law, 2008 (No. XVIII of 2009).

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THE STATES, in pursuance of their Resolution of the 29th March, 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 Islands of Guernsey, Alderney, Herm and Jethou.

PART I

AMENDMENT OF PREFERRED DEBTS LAW

Amendment of 1983 Law.

1. The Preferred Debts (Guernsey) Law, 1983^b ("**the 1983 Law**") is amended in accordance with the following provisions of this Law.

2. For section 1(1)(b) of the 1983 Law, substitute the following –

"(b) in priority to all debts other than debts to which paragraph (a) relates –

^a Article VI of Billet d'État No. VII of 2006.

^b Ordres en Conseil Vol. XXVIII, p. 184; amended by No. VII of 1992; No. III of 1993; No. IX of 1998; Ordinance No. XXXI of 2005; and the Preferred Debts (Guernsey and Alderney) (Amendment) Ordinance, 2006.

- (i) all wages or salary due to any clerk or servant (whether or not earned wholly or in part by way of commission) for a period or periods not exceeding four months in the aggregate in respect of services rendered to the debtor during the six years immediately preceding the relevant date, and the wages due to any workman or labourer (whether payable for time or for piece work) for a like period or periods in respect of services so rendered,
- (ii) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or, in the case of his death, to any other person in his right) on the termination of his employment before, or by the effect of, the insolvency of the debtor or the winding-up of a company,
- (iii) all income tax deducted during a period or periods not exceeding twelve months in the aggregate, in accordance with the provisions of section 81A of the Income Tax (Guernsey) Law, 1975, as

amended^c, by an employer from the emoluments of an employee within the six years immediately preceding the relevant date and not paid by the employer in accordance with the provisions of the said section 81A,

- (iv) all primary Class I contributions deducted during a period or periods not exceeding twelve months in the aggregate, in accordance with the provisions of section 13 of the Social Insurance (Guernsey) Law, 1978, as amended^d, by an employer from the earnings of an employed person within the six years immediately preceding the relevant date and not paid by the employer in accordance with the requirements of the said section 13,

provided always that –

- (A) if wages or salary are due to the clerk, servant, workman or

^c Ordres en Conseil Vol. XXV, p.124; section 81A was inserted by Vol. XXVII, p. 118 and amended by Vol. XXVIII, p. 184, Vol. XXXII, p. 307 and No. IV of 1991.

^d Ordres en Conseil Vol. XXVI, p. 292 as amended by Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59; No. XII of 1993; Ordinance No. XIV of 1993 (Tome XXVI, p. 177); No. V of 1994; Nos. VI and XIII of 1995; No. 1 of 1998; No. VI of 1999; No. X of 2000; No. IX of 2001; No. XXIV of 2003; No. XI of 2004.

labourer in question for a period
or periods exceeding four months
in the aggregate, or

- (B) if income tax or primary Class I contributions have been deducted by the employer in question during a period or periods exceeding twelve months in the aggregate and not paid by the employer as mentioned in subparagraph (iii) or (iv) above,

then, for the purpose of calculating the amount to which preference is to be given in accordance with subparagraph (i), (iii) or (iv), as the case may be, regard shall be had to the wages or salary most recently due or to the deductions most recently made."

3. In section 4(2) of the 1983 Law after the words "next following the first publication of the notice" insert "or within such additional time as the Court may in any particular case allow".

4. In section 4(5)(a) of the 1983 Law, for the words "within the period specified by notice as aforesaid" substitute "within the period of 14 days next following the first publication of the notice referred to in subsection (2)".

5. In section 4(5)(b) of the 1983 Law, after the words "within the said period" insert "or after the expiration of that period but prior to the goods being sold".

6. After section 9 of the 1983 Law insert the following section –

"Power to make Ordinances and general provisions in respect thereof.

9A. (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to make Ordinances (and vice versa).

(3) An Ordinance under this Law –

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

(b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States to be necessary or expedient.

(4) 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 case,

(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, and
- (iii) any such provision either unconditionally or subject to any prescribed conditions."

NOTE

The following case has referred to this Law:

Lee Douglass (in Bankruptcy) v. Krasner & Wright (2017)
(Unreported, Royal Court, 10th July) (Guernsey Judgment No. 32/2017).

PART II

MISCELLANEOUS PROVISIONS AS TO ARRÊT, DÉSASTRE, ETC

Sale of goods by Sheriff to pass good title; and exclusion of liability.

7. (1) Where Her Majesty's Sheriff or (as the case may be) the Clerk of the Court of Alderney –

- (a) has executed an arrest of any goods, and
- (b) has sold the goods, then, provided that –

- (i) he was acting under the authority of an Act of Court,
- (ii) notice of the intended sale was given in La Gazette Officielle or (as the case may be) in the Alderney Official Gazette,
- (iii) prior to the date of sale, no application had been made to the Court to determine the lawful ownership of the goods or otherwise to oppose the sale, and
- (iv) where appropriate, he complied with the provisions of section 4 of the 1983 Law (formalities for sale of goods subject to landlord's tacit hypothecation),

subsections (2) to (6) apply in relation to the sale.

(2) The sale of the goods shall not be impugned by reason of the subsequent determination of any application to the Court to decide the lawful ownership of the goods or otherwise to oppose the sale.

(3) A bona fide purchaser for value of the goods without notice of any ground on which such an application might have been made shall be deemed to have acquired good title to them.

(4) The rights of any person claiming to be the owner or joint owner of the goods shall attach instead to the proceeds of sale received by Her Majesty's Sheriff or, as the case may be, by the Clerk of the Court of Alderney (whether or not the proceeds are still in his hands) or to any property representing the

proceeds of sale.

(5) No liability shall be incurred by Her Majesty's Sheriff or (as the case may be) by the Clerk of the Court of Alderney, or by any of their respective officers, servants or agents, in respect of the arrest and sale of the goods and the subsequent paying out of the proceeds of sale.

(6) Subsection (5) does not apply to anything done or omitted to be done in bad faith.

NOTES

The following case has referred to section 7:

Lee Douglass (in Bankruptcy) v. Krasner & Wright (2017)
(Unreported, Royal Court, 10th July) (Guernsey Judgment No. 32/2017).

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.

Power of Commissioner to call for evidence of claims.

8. In désastre proceedings the Commissioner may, at the meeting of creditors for the proving of claims or at such other time as he thinks fit, require any creditor to provide, for the purpose of the verification of his claim or preference, such evidence, information and documents in support thereof (including, without limitation, evidence by affidavit) as the Commissioner thinks fit.

Power of Court to make rules as to désastre proceedings, arrest, etc.

9. (1) The Royal Court may by Order make such provision as it thinks fit as to the procedure to be followed in relation to –

- (a) désastre proceedings in Guernsey, and
- (b) the arrest and sale of goods or other property by Her Majesty's Sheriff.

(2) The Court of Alderney may by Order make such provision as it thinks fit as to the procedure to be followed in relation to –

- (a) désastre proceedings in Alderney, and
- (b) the arrest and sale of goods or other property by the Clerk of the Court of Alderney.

(3) An Order under this section –

- (a) may be amended or repealed by a subsequent Order hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Royal Court or (as the case may be) the Court of Alderney to be necessary or expedient, and
- (c) may make provision modifying any provision of this Law or of the 1983 Law in its application to the matters in respect of which such an Order may be made.

NOTE

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with

the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.

PART III GENERAL PROVISIONS

Ordinances.

- 10.** (1) The States may by Ordinance amend this Law.
- (2) An Ordinance under this Law –
- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States to be necessary or expedient.
- (3) 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 case,
 - (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, and
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

Interpretation.

11. (1) In this Law –

"Court" means –

- (a) in relation to Guernsey, Herm and Jethou, the Royal Court sitting as an Ordinary Court or (as the case may be) the Magistrate's Court sitting as the Petty Debts Court,
- (b) in relation to Alderney, the Court of Alderney,

"the 1983 Law" means the Preferred Debts (Guernsey) Law, 1983^e.

(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.

^e Ordres en Conseil Vol. XXVIII, p. 184 as amended by No. VII of 1992; No. III of 1993; No. IX of 1998; and Ordinance No. XXXI of 2005.

(3) The provisions of the Interpretation (Guernsey) Law, 1948^f apply to the interpretation of this Law throughout the islands of Guernsey, Alderney, Herm and Jethou.

NOTE

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), the reference in this section to the "Petty Debts Court" shall be construed as a reference to the Magistrate's Court within the meaning of the 2008 Law, with effect from 1st September, 2009.

Transitional provisions.

12. (1) The amendments effected to the 1983 Law by section 2 of this Law have effect in relation to désastre proceedings and the winding up of a company subject to the provisions of subsections (2) and (3).

(2) The amendments do not apply in relation to désastre proceedings where the meeting of creditors for the proving of claims was held by a Commissioner of the Court before the date of commencement of this Law.

(3) The amendments do not apply in relation to the winding up of a company where –

- (a) in the case of a compulsory winding up, the creditors' meeting for the purpose of examining and verifying financial statements and creditors' claims and preferences was held by a Commissioner of the Court pursuant to section 102(2) of the Companies

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

(Guernsey) Law, 1994^g or (as the case may be) section 133(2) of the Companies (Alderney) Law, 1994^h (as read with sections 2 and 3 of the 1983 Law) before the date of commencement of this Law, or

- (b) in the case of a voluntary winding up, the general meeting of the company for the purpose of presenting the liquidator's account of the winding up was held by the liquidator pursuant to section 88(1) of the Companies (Guernsey) Law, 1994 or (as the case may be) section 119(1) of the Companies (Alderney) Law, 1994 before that date.

NOTE

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

Citation.

13. This Law may be cited as the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006.

Commencement.

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

^g Order in Council No. XXXIII of 1994.

^h Order in Council No. XXXIV of 1994.

NOTE

The Law was brought into force on 25th February, 2009 by the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006 (Commencement) Ordinance, 2009, section 1.
