

PROJET DE LOI

ENTITLED

The Trading Standards (Enabling Provisions) (Guernsey) Law, 2009 *

[CONSOLIDATED TEXT]

NOTE

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

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The Trading Standards (Enabling Provisions) (Guernsey) Law, 2009

ARRANGEMENT OF SECTIONS

1. Power to enact Ordinances in relation to trading standards.
2. Meaning of trading standards.
3. Specific matters for which Ordinances may make provision.
4. General provisions as to Ordinances, etc.
5. Interpretation.
6. Citation.

SCHEDULE Ordinances under this Law may make provision corresponding to that in the following Acts.

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The Trading Standards (Enabling Provisions) (Guernsey) Law, 2009

THE STATES, in pursuance of their Resolution of the 27th July, 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, Herm and Jethou.

Power to enact Ordinances in relation to trading standards.

1. The States may by Ordinance make such provision as they think fit in relation to trading standards.

NOTE

The following case has referred to this Law:

Smith v. Carey Olsen [2020]GRC062 (Unreported, Royal Court, 22nd October).

Meaning of trading standards.

2. In this Law "**provision**" in relation to trading standards means provision in relation to –

(a) the protection of consumers,

^a Article XVIII of Billet d'État No. XIII of 2006.

- (b) the protection of undertakings in the carrying on of business,
- (c) the supply of goods and services, and
- (d) the standards to be observed by and enforceable against undertakings supplying or concerned in the supply of goods and/or services,

and, without limitation, and subject to such exceptions, adaptations and modifications as the States think fit, includes provision corresponding to that which is made by or which may be made under any Act of Parliament set out in the Schedule.

NOTE

The following case has referred to section 2:

Smith v. Carey Olsen [2020]GRC062 (Unreported, Royal Court, 22nd October).

Specific matters for which Ordinances may make provision.

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

- (a) the regulation of matters comprised in section 1,
- (b) exceptions, exemptions and derogations from any such regulation including, without limitation, exceptions, exemptions and derogations –
 - (i) in the public interest,

- (ii) as a matter of public policy,
 - (iii) for the benefit of consumers or any class or description thereof, or
 - (iv) on social, community, economic, ethical and other grounds,
- (c) the establishment of a trading standards service (referred to in this Law as the "**Trading Standards Service**") whether as a service within [the Committee], as an office of [the Committee] or as an independent legal entity, with responsibility for the administration and enforcement of this Law and any Ordinance under section 1, and with such rights, liabilities, functions and capacity as may be prescribed,
- (d) the investigation by any prescribed person of matters comprised in section 1 and the making, issuing and publication by them of statements, reports, notices and warnings on those matters,
- (e) the powers vested in any prescribed person –
 - (i) of entry, inspection, search and inquiry,
 - (ii) of production, seizure, retention, use and disclosure of documents, information and goods,
 - (iii) to make purchases of goods and to require any

person to sell such goods,

for the purposes of –

- (A) the administration and enforcement of any Ordinance under section 1,
 - (B) carrying out investigations and making reports, and
 - (C) generally for the performance of their functions,
- (f) the obtaining and exchanging of information,
- (g) the service of documents,
- (h) the issue by any prescribed person of codes of practice, guidance and recommendations, and their status in law,
- (i) the imposition by any prescribed person of directions, orders, penalties (including, without limitation, financial penalties, whether calculated by reference to an undertaking's turnover or otherwise), interim measures and other sanctions,
- (j) the appointment by any prescribed person of any person or body to advise them in relation to the exercise of their functions under this Law and any Ordinance under it,

- (k) the production and publication by any prescribed person of reports and accounts and the auditing of accounts,
- (l) the objectives to be promoted and the other matters to be taken into account by any prescribed person in carrying out their respective functions under this Law and any Ordinance under it,
- (m) co-operation and the provision of mutual assistance by any prescribed person in relation to matters comprised in section 1, with or to authorities –
 - (i) discharging functions corresponding to any of their own, or
 - (ii) which are of any prescribed class or description,
- (n) privilege and duties of confidentiality and exceptions, exemptions and derogations therefrom,
- (o) the implementation of –
 - (i) any international instrument relating to matters comprised in section 1 or any aspect thereof,
 - (ii) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,

subject to such exceptions, adaptations and modifications as may be specified in the Ordinance,

(p) the administration and enforcement of any Ordinance under this Law including, without limitation, provision as to –

(i) appeals in relation to decisions in respect of such administration and enforcement,

(ii) modes of civil enforcement (including, without limitation, proceedings for injunctions),

(iii) modes of criminal enforcement (but subject to section 4(5)),

(iv) remedies in respect of contraventions of any prohibition, restriction, regulation, duty, obligation or requirement imposed by an Ordinance under this Law (but subject to section 4(5)), and

(v) the establishment of a tribunal and a panel of persons from whom the members of the tribunal are to be drawn,

and otherwise as to the administration of justice in relation to matters comprised in section 1,

(q) the jurisdiction and powers of the courts, and the constitution and procedure of those courts, in relation to

matters comprised in section 1,

- (r) provision as to evidence including, without limitation, rules as to the admission of evidence and evidential presumptions,
- (s) the authorisation of, and conferring of functions on, any prescribed person for the purposes of the administration and enforcement of any Ordinance under this Law,
- (t) the granting (conditionally or otherwise), refusal, variation, revocation and suspension of licences or other descriptions of authorisation or approval for the doing of anything restricted, regulated or controlled by an Ordinance under this Law,
- (u) the making of applications for such licences, authorisations or approvals,
- (v) the levying of fees, and
- (w) the recovery of costs associated with the administration and enforcement of any Ordinance under this Law.

NOTE

In section 3, 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 7, with effect from 1st May, 2016.

General provisions as to Ordinances, etc.

4. (1) The States may make an Ordinance under section 5(3) where they consider it necessary or expedient to do so for the purpose of –

- (a) enabling the Trading Standards Service to carry out any of its functions more effectively,
- (b) enhancing or protecting the reputation or economic interests of Guernsey,
- (c) enhancing or facilitating trading standards, or regulating trading standards, in the interests of –
 - (i) consumers or any class or description thereof,
 - (ii) undertakings in the carrying out of a business, or
 - (iii) the supply of goods and services,
- (d) discharging any international obligation to which Guernsey is subject, or
- (e) assisting, in the interests of the public or otherwise, any authority which appears to the States to discharge in a place outside Guernsey functions corresponding to any of the functions of the Trading Standards Service.

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

- (2) 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).
- (3) 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,
- (iv) different provision for different classes, descriptions and categories of consumers, goods and services, businesses and undertakings.

(4) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law –

- (a) may, subject to subsection (5), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) may empower [the Committee], any other department and any other prescribed person (including, without limitation, any court in Guernsey) to make or issue orders, rules, regulations, codes or guidance as to matters in respect of which an Ordinance can be made under this Law,
- (c) may make provision for the purpose of dealing with matters arising out of or related to matters comprised in section 1 or any international instrument relating to such matters,
- (d) may provide that no liability shall be incurred by any prescribed person 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,

- (e) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
 - (f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law,
 - (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.
- (5) An Ordinance under this Law may not –
- (a) provide for offences to be triable only on indictment,
 - (b) 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, or
 - (c) authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

NOTE

In section 4, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

Interpretation.

5. (1) In this Law, unless the context requires otherwise, the expressions listed below shall be construed as follows –

"business" includes any economic activity, trade or profession, whether or not carried on for profit,

"[the Committee]" means the [Committee for Home Affairs],

"a department" means any department, council or committee of the States, however styled,

"document" includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form –

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

"electronic form", in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

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

"Guernsey" includes Herm and Jethou,

"implementation", in relation to –

- (a) any international instrument,
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,

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

"international instrument" means –

- (a) any convention, treaty, protocol or other international instrument, or any provision thereof, or
- (b) any Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b,

whether or not binding on Guernsey,

"person" includes an individual and also –

^b Order in Council No. III of 1994.

- (a) a body corporate, and
- (b) a partnership or other unincorporated body of persons,

incorporated or established with or without limited liability in any part of the world,

"prescribed" means prescribed by Ordinance under this Law or by regulation made under an Ordinance under this Law,

"prescribed person" means a prescribed person, body or office which includes, without limitation, the Trading Standards Service, [the Committee] and the States (and their respective officers),

"provision" in relation to trading standards: see section 2,

"service" includes any benefit, advice, privilege or facility which is, or which is to be, provided, granted or conferred in the course of business,

"States" means the States of Guernsey,

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

"supply" includes –

- (a) in relation to goods, supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and

- (b) in relation to services, provide, sell, lease, grant or confer,

"Trading Standards Service" has the meaning set out in section 3(c), and

"undertaking" means a person carrying on a business and includes an association, whether or not incorporated, which consists of or includes such persons.

(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 States may by Ordinance amend subsection (1) so as to amend the meaning of any expression defined therein or to define any other expression.

NOTES

In section 5, the words, first, "the Committee" and, second, "Committee for Home Affairs" in square brackets in the definition of the expression "the Committee" in subsection (1), and, third, the words "the Committee" in square brackets wherever else occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 7, section 2, Schedule 1, paragraph 1(d), Schedule 2, Part 1, paragraph 3 and section 5(1), Schedule 3, paragraph 7, 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 Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(d), Schedule 2, Part 1, paragraph 3, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Citation.

6. This Law may be cited as the Trading Standards (Enabling Provisions) (Guernsey) Law, 2009.

NOTE

The Law received Royal Sanction on 15th December, 2010 and was registered on the Records of the Island of Guernsey and came into force on 7th February, 2011.

SCHEDULE

Section 2

ORDINANCES UNDER THIS LAW MAY MAKE PROVISION
CORRESPONDING TO THAT IN THE FOLLOWING ACTS

1. Misrepresentation Act 1967^c.
2. Trade Descriptions Act 1968^d.
3. Unsolicited Goods and Services Act 1971^e.
4. Supply of Goods (Implied Terms) Act 1973^f.
5. Fair Trading Act 1973^g.
6. Hallmarking Act 1973^h.
7. Prices Act 1974ⁱ.
8. Consumer Credit Act 1974^j.
9. Torts (Interference with Goods) Act 1977^k.
10. Unfair Contract Terms Act 1977^l.
11. Sale of Goods Act 1979^m.
12. Supply of Goods and Services Act 1982ⁿ.

c	1967 c. 7.
d	1968 c. 29.
e	1971 c. 30.
f	1973 c. 13.
g	1973 c. 41.
h	1973 c. 43.
i	1974 c. 24.
j	1974 c. 39.
k	1977 c. 32.
l	1977 c. 50.
m	1979 c. 54.

13. Weights and Measures Act 1985^{**o**}.
14. Consumer Protection Act 1987^{**p**}.
15. Property Misdescriptions Act 1991^{**q**}.
16. Sale and Supply of Goods Act 1994^{**r**}.
17. Late Payment of Commercial Debts (Interest) Act 1998^{**s**}.
18. Enterprise Act 2002^{**t**}.
19. Consumer Credit Act 2006^{**u**}.
20. Any statutory instrument made under an Act of Parliament mentioned in this Schedule.
21. Any amendment to any Act of Parliament mentioned in this Schedule.

n	1982 c. 29.
o	1985 c. 72.
p	1987 c. 43.
q	1991 c. 33.
r	1994 c. 35.
s	1998 c. 20.
t	2002 c. 40.
u	2006 c. 14.