

PROJET DE LOI

ENTITLED

The Privileges and Immunities (Bailiwick of Guernsey) Law, 2004 *

[CONSOLIDATED TEXT]

NOTE

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* No. XII of 2005; as amended by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XXXIX of 2015); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVI of 2018). See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 617); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015).

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ARRANGEMENT OF SECTIONS

1. Power to make Ordinances as to privileges and immunities.
2. Interpretation.
3. General provisions as to subordinate legislation.
4. Citation.

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THE STATES, in pursuance of their Resolution of the 27th March, 2002^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.

Power to make Ordinances as to privileges and immunities.

1. The States may by Ordinance –
 - (a) specify any international organisation or any class or description of person,
 - (b) make such provision as they think fit for the purpose of conferring the privileges and immunities to be enjoyed by or in relation to any organisation or person specified under paragraph (a), and
 - (c) make such other provision as they think fit for the implementation of any international agreement relating to privileges and immunities or any aspect thereof.

NOTE

^a Article III of Billet d'État No. IV of 2002.

The following Ordinances have been made under section 1:

European Court of Human Rights (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2006;

Asian Infrastructure Investment Bank (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2019;

World Trade Organization (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2020;

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2021.

Interpretation.

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

“**enactment**” includes any Law, Ordinance, Act of Parliament and Order in Council,

“**implementation**”, in relation to any international agreement relating to privileges and immunities or any aspect thereof, includes the enforcement or enactment thereof, and the securing of the administration, execution, recognition, exercise or enjoyment thereof, in or under domestic law,

“**international agreement**” means –

- (a) any convention, treaty, protocol or other international instrument (including, without limitation, the Vienna Convention on Diplomatic Relations^b), or any provision thereof, and

^b The Convention was signed in 1961.

- (b) any Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^c,

whether or not binding upon the Bailiwick or any part thereof, and includes any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international agreement,

“international organisation” means, subject to subsection (2), any organisation, community or body –

- (a) of which the United Kingdom or any other sovereign power is a member, or
- (b) which is established under any international agreement,

“privileges and immunities” includes exemptions, facilities, exclusions, rights, reliefs, refunds, waivers, status and capacity and (by way of example, and without limitation) any privileges and immunities which in the United Kingdom are accorded by or under the Diplomatic Privileges Act 1964^d, the Consular Relations Act 1968^e or the International Organisations Act 1968^f,

“property” means property and assets of every description and includes rights, benefits and powers of every description,

^c Order in Council No. III of 1994.
^d An Act of Parliament (1964 c. 81).
^e An Act of Parliament (1968 c. 18).
^f An Act of Parliament (1968 c. 48).

“States” means the States of Deliberation.

(2) The reference in section 1 to an international organisation includes a reference to its officers, members of staff, representatives, institutions, organs, missions, premises, papers and property.

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

(4) 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.

NOTE

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

General provisions as to subordinate legislation.

3. (1) An Ordinance under this Law –
- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States think fit, including (without limitation) provision repealing, amending or disapplying any enactment.

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

(2) 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 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 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 Magistrate's

Court, the Court of Alderney or the Court of the Seneschal which exceed the limits of jurisdiction for the time being imposed upon those Courts by, respectively, section 10 of the Magistrate's Court (Guernsey) Law, 1954^h, section 13 of the Government of Alderney Law, 1987ⁱ and section 23 of the Reform (Sark) Law, 1951^j,

- (b) may direct that any provision of –
 - (i) any international agreement relating to privileges and immunities or any aspect thereof, or
 - (ii) any enactment or any order, rule, regulation, scheme, warrant, byelaw or other instrument made under any enactment,

shall have effect in the Bailiwick or any part thereof with such exceptions, adaptations and modifications as may be specified in the Ordinance,

- (c) without prejudice to the provisions of paragraph (b), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision described in paragraph (b), which provision

^h Ordres en Conseil Vol. XVI, p. 103; Vol. XXVII, p. 170; Vol. XXVIII, p. 5; and No. V of 1989.

ⁱ Ordres en Conseil Vol. XXX, p. 37; and No. VI of 1989.

^j Ordres en Conseil Vol. XV, p. 215; Vol. XXIII, p. 200; Vol. XXIX, p. 27; No. VII of 1989; and No. XII of 1991.

shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance under this Law,

- (d) may make provision for the purpose of dealing with matters arising out of or related to any provision described in paragraph (b),
- (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 apply to the whole of the Bailiwick or to any part thereof, 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* (including provision amending any enactment), but may not make provision which imposes or increases taxation or which provides that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) The [Policy & Resources Committee] (and any other department of the States) must –

- (a) before recommending the States to agree to make an Ordinance under this Law which is to apply in Sark or Alderney, consult the [Policy and Finance Committee] of the Chief Pleas of Sark or (as the case may be) the

Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance, and

- (b) inform the States of the views of those committees when making any recommendation to the States as to the matter consulted upon,

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

NOTES

In section 3,

the words in the first pair of square brackets in subsection (4) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016;

the words in square brackets in paragraph (a) of subsection (4) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.¹

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.²

The following Ordinances have been made under section 3:

European Court of Human Rights (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2006;

World Trade Organization (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2020;

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2021.

The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

The Reform (Sark) Law, 1951 has since been repealed by the Reform (Sark) Law, 2008, section 66(2), Schedule 2, with effect from 1st September, 2008, subject to, first, the general savings and, second, the specific savings and transitional provisions in, respectively, section 66(3) and section 67 of the 2008 Law.

Citation.

4. This Law may be cited as the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004.

NOTE

The Law received Royal Sanction on 19th July, 2005 and was registered on the Records of the Island of Guernsey and came into force on 5th September, 2005.

¹ These words were previously substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015. See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

² The functions, rights and liabilities of the Sark Policy and Performance

Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Sark General Purposes and Finance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance. Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.