

ORDER IN COUNCIL

XXVIII
1989

ratifying a Projet de Loi

ENTITLED

The Fishing (Bailiwick of Guernsey) Law, 1989

(Registered on the Records of the Island of Guernsey
on the 6th February, 1990.)



1989

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of February, 1990 before Sir Charles Frossard, Kt., Bailiff; present:— Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th December, 1989 approving and ratifying a *Projet de Loi* of the States of Guernsey entitled "The Fishing (Bailiwick of Guernsey) Law, 1989", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered:—

1. That the said Order in Council 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 in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 19th day of December 1989

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 13th day of December 1989 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

‘1. That, in pursuance of their Resolution of of the 27th day of July, 1989 the States of Deliberation at a meeting held on the 27th day of September, 1989 approved a Bill or “Projet de Loi” entitled “The Fishing (Bailiwick of Guernsey) Law, 1989”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 4th day of October, 1989, considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 4th day of October, 1989, considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or “Projet de

Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Fishing (Bailiwick of Guernsey) Law, 1989”, and to order that the same shall have force of law in the Bailiwick of Guernsey.’

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Fishing (Bailiwick of Guernsey) Law, 1989

THE STATES, in pursuance of their Resolution of the 27th day of July, 1989, 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.

1. If a fishing boat fishes within fishery limits in contravention of an enforceable Community restriction relating to sea fishing the master, owner and charterer (if any) of the boat are each guilty of an offence. **Unlawful fishing.**

2. (1) A person guilty of an offence under section 1 shall be liable— **Penalties.**

(a) on summary conviction—

- (i) to a fine not exceeding £50,000; and
- (ii) subject to subsection (3)(a), to a fine not exceeding the value of the fish in respect of which the offence was committed;

(b) on conviction on indictment, to a fine.

(2) Subject to subsection (3)(b), the court by or before which a person is convicted of an offence under section 1 may order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence.

(3) Where in respect of an offence under section 1 which is tried summarily—

- (a) the court orders the forfeiture of any fish under subsection (2), the court shall not impose a fine under subsection (1)(a)(ii) in respect of the offence;
- (b) the court imposes a fine under subsection (1)(a)(ii), the court shall not order the forfeiture of the fish in respect of which the offence was committed.

(4) A fine to which a person is liable under subsection (1)(a)(ii) in respect of an offence shall be in addition to any other penalty (pecuniary or otherwise) to which he is liable in respect of the offence under any other enactment.

**Powers of
sea-fishery
officers.**

3. (1) For the purpose of enforcing any restriction mentioned in section 1, a sea-fishery officer may exercise, in relation to any fishing boat within fishery limits, the powers conferred by subsections (2) to (4).

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose mentioned in subsection (1) and, in particular,—

- (a) may examine any fish on the boat and the equipment of the boat, including the fish-

ing gear, and require any person on board the boat to do anything which appears to him to be necessary for facilitating the examination;

- (b) may require any person on board the boat to produce any document which relates to the boat, to its fishing operations or other operations ancillary thereto or to the persons on board and which is in his custody or possession, and may take copies of any such document;
- (c) for the purpose of ascertaining whether the master, owner or charterer (if any) of the boat has contravened any restriction mentioned in section 1, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search; and
- (d) where the boat is one in relation to which he has reason to suspect that there has been a contravention of any such restriction, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings in respect of the contravention;

but nothing in paragraph (d) permits any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to him that a contravention of any restriction mentioned in section 1 has at any time taken place within fishery limits. he may—

- (a) require the master of the boat in relation to which the contravention took place to take, or may himself take, the boat and its crew to whichever port in the Bailiwick appears to him to be convenient; and
- (b) detain or require the master to detain the boat in the port;

and where he detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a sea-fishery officer.

(5) A sea-fishery officer may seize—

- (a) any fish in respect of which an offence under section 1 has been or is being committed where the fish are on the fishing boat with or on which the offence was or is being committed or are in the ownership or custody of, or under the control of, the owner, master, or charterer (if any) of the fishing boat;
- (b) any net or other fishing gear used in contravention of any restriction mentioned in section 1.

(6) A sea-fishery officer is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by this section if the act was done in good faith and there were reasonable grounds for doing it

Offences in
relation to
sea-fishery
officers.

4. A person who within fishery limits—

- (a) fails without reasonable excuse to comply with a requirement imposed by or to answer a question asked by a sea-fishery officer under section 3;

- (b) prevents or attempts to prevent another person from complying with such a requirement or answering such a question;
 - (c) assaults such an officer while exercising any power conferred by section 3; or
 - (d) wilfully obstructs such an officer in the exercise of any of those powers,
- is guilty of an offence and liable—

(i) on summary conviction, to a fine not exceeding £5,000; and

(ii) on conviction on indictment, to a fine;

and in the case of an offence of assault under paragraph (c) the offender shall, instead of or in addition to such fine, be liable to imprisonment for a term not exceeding 3 months on summary conviction or 2 years on conviction on indictment.

5. Where an offence under section 1 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

Offences by
bodies.
corporate.

6. (1) Proceedings for an offence under section 1 or 4 may be taken, and the offence may be treated as having been committed, in any place in the Bailiwick.

Jurisdiction
and powers
of court.

(2) No provision of this Law shall be taken as increasing the powers of the Court of Alderney or the Court of the Seneschal of Sark to impose penalties.

**Application
of Law.**

7. Sections 1, 2, 3(1) to (5), 5 and 6 apply in relation to any restriction mentioned in section 1 except where or to the extent that other provision is made by Ordinance under section 8.

Ordinances.

8. (1) The States may by Ordinance, subject to subsection (2)(d), make such provision as appears to them to be requisite for the enforcement of any restriction mentioned in section 1.

(2) An Ordinance under subsection (1)—

- (a) may contain such incidental, consequential, transitional or supplementary provision as the States consider expedient;
- (b) may be amended or repealed by a subsequent Ordinance thereunder;
- (c) may make different provisions for different cases or circumstances;
- (d) shall not stipulate, in respect of any enforceable Community restriction, a penalty which exceeds the penalty stipulated in respect of that restriction from time to time by order under section 30(2) of the Fisheries Act 1981(a).

**Interpreta-
tion.**

9. (1) In this Law, unless the context otherwise requires—

- “the Bailiwick” means the Bailiwick of Guernsey;
- “enforceable Community restriction” means a restriction to which section 2(1) of the European Communities Act 1972(b) applies;

(a) An Act of Parliament (1981 c.29).

(b) An Act of Parliament (1972 c.68).

- “fishery limits” means that part of British fishery limits set by or under section 1 of the Fishery Limits Act 1976(c) adjacent to the Bailiwick and not exceeding 12 international nautical miles of 1852 metres from the baselines from which the breadth of the territorial sea adjacent to the Bailiwick is measured, excluding any waters beyond the median line;
- “fishing boat” means a vessel for the time being employed in fishing operations or any operations ancillary thereto;
- “master” includes, in relation to a fishing boat, the person for the time being in command or charge of the boat;
- “median line” means a line every point of which is equidistant from the nearest points of (on the one hand) the baselines from which the breadth of the territorial sea adjacent to the Bailiwick is measured and (on the other hand) the corresponding baselines of any other country including the Bailiwick of Jersey;
- “penalties” means criminal penalties (whether by way of fine, imprisonment or forfeiture);
- “sea-fishery officer” means a person who by virtue of section 7 of the Sea Fisheries Act 1968(d) is a British sea-fishery officer.

(2) Unless the context otherwise requires, a reference in this Law to another enactment is a reference to that enactment as amended, re-enacted, extended or applied by or under any other enactment, including this Law.

(c) An Act of Parliament (1976 c.86).

(d) An Act of Parliament (1968 c.77).

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

Citation. 10. This Law may be cited as the Fishing (Bailiwick of Guernsey) Law, 1989.

Commencement. 11. This Law shall come into operation on the 28th day after the date of its registration on the records of the Island of Guernsey.

K. H. TOUGH,
Her Majesty's Greffier.

^(e) Ordres en Conseil Vol. XIII, p. 355.